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Emergency Rules

DECLARATION OF EMERGENCY

Department of Children and Family Services Division of Programs Licensing Section

Juvenile Detention Facilities (LAC 67:V.Chapter 75)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section in accordance with provisions of the Administrative Procedure Act, R.S. 49:953(B) proposes to adopt LAC 67:V.Chapter 75 to include standards for juvenile detention facilities. This declaration is necessary to extend the original emergency rule effective on January 31, 2012, since it is effective for a maximum of 120 days and will expire on May 29, 2012, before the final Rule takes effect. This Emergency Rule extension is effective on May 29, 2012 and will remain in effect until the final Rule becomes effective.

Subpart 8, Residential Licensing is being amended to add Chapter 75 in accordance with R.S. 15:1110 which requires DCFS to license juvenile detention facilities. This law requires the creation of licensing standards for juvenile detention facilities and for such standards to be promulgated and in place by January 2012. All juvenile detention facilities are mandated to be licensed by January 1, 2013.

Emergency action is necessary to ensure that DCFS is in compliance with the above mentioned statute.

Title 67

SOCIAL SERVICES

Part V. Child Welfare

Subpart 8. Residential Licensing

Chapter 75. Juvenile Detention Facilities

§7501. Purpose

A. It is the intent of the legislature to protect the health, safety, and well-being of the youth of this state who are placed in a Juvenile Detention Facility (JDF). Toward this end, it is the purpose of R.S. 15:1110 to provide for the establishment of statewide standards for juvenile detention facilities, to ensure maintenance of these standards, and to regulate conditions in these facilities through a licensing program. It shall be the policy of this state that all juvenile detention facilities provide temporary, safe, and secure custody of youth during the pendency of youth proceedings, when detention is the least restrictive alternative available to secure the appearance of the youth in court or to protect the safety of the child or the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7503. Authority

A. Legislative Provisions

1. R.S. 15:1110 is the legal authority under which the department prescribes minimum standards for the health, safety and well-being of youth placed in Juvenile Detention Facilities (JDF).

B. Penalties

1. Whoever operates a child care JDF without a valid license may be fined in accordance with the law.

C. Waiver Request

1. In specific instances, the secretary of DCFS may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the staff and/or youth are not imperiled.

a. Standards shall be waived only when the secretary determines, upon clear and convincing evidence, that the demonstrated economic impact is sufficient to make compliance impractical for the provider despite diligent efforts, and when alternative means have been adopted to ensure that the intent of the regulation has been met ensuring the health, safety, and well being of the youth served.

b. An application for a waiver shall be submitted by a provider using the Request for Waiver from Licensing Standards form. The form shall be submitted to the DCFS Licensing Section. A request for a waiver shall provide the following information: a statement of the provisions for which the waiver is being requested, an explanation of the reasons why the provisions cannot be met, including information demonstrating that the economic impact is sufficiently great to make compliance impractical, and a description of alternative methods proposed for meeting the intent of the regulation sought to be waived.

c. All requests for a waiver will be responded to in writing by the DCFS secretary or designee. A copy of the waiver decision shall be kept on file at the facility and presented to licensing staff during all licensing inspections.

d. A waiver is issued at the discretion of the secretary and continues in effect at his/her pleasure. The waiver may be revoked by the secretary at any time, either upon violation of any condition attached to it at issuance, or upon failure of any of the statutory prerequisites to issuance of a waiver (i.e., the cost of compliance is no longer so great as to be impractical or the health or safety of any staff or any child in care is imperiled), or upon his/her determination that continuance of the waiver is no longer in the best interest of DCFS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7505. Definitions

Abuse—any one of the following acts which seriously endangers the physical, mental, or emotional health of the youth:

1. the infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the youth by a parent or any other person;

2. the exploitation or overwork of a youth by a parent or any other person; and

3. the involvement of the youth in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the youth's sexual involvement with any other person or of the youth's involvement in pornographic displays or any other involvement of a youth in sexual activity constituting a crime under the laws of this state.

Administrative Segregation—restriction of a youth to a designated sleeping room or dorm for reasons other than current acting-out behavior, discipline, medical reasons, or threats to the youth.

Administrator—the person with authority and responsibility for the on-site, daily implementation and supervision of the facility's overall operation.

Affiliate—

1. with respect to a partnership, each partner thereof;
2. with respect to a corporation, limited liability company, or other corporate entity, each officer, director and stockholder thereof; and
3. with respect to a natural person: anyone related within the third degree of kinship to that person; each partnership and each partner thereof of which that person or any affiliate of that person is a partner; and each corporation in which that person or any affiliate of that person is an officer, director or stockholder.

Alternate Power Source—an alternate source of electrical power that provides for the simultaneous operations of life safety systems during times of emergency.

Average Daily Population—a calculation determined by counting the number of youth in detention each day of the month, adding the daily counts (at 0600 hours), and dividing the sum by the number of days in the month.

Average Length of Stay (ALOS)—average length of stay is calculated on those youth who end a placement during the reporting period. ALOS is the sum of all the days of all the stays for those released during the period divided by the number of "releases." Stays should be calculated by counting admission date but not date of release.

Body Cavity Search—a visual inspection of a body cavity, defined as a rectal cavity, or vagina, for the purpose of discovering whether contraband is concealed in it.

Complaint—an allegation that any person or facility is violating any provisions of these standards or engaging in conduct, either by omission or commission, that negatively affects the health, safety, rights, or welfare of any youth who is residing in a juvenile detention facility.

Contraband—any object prohibited within a juvenile detention facility, which may include but is not limited to: currency, stolen property, articles of food or clothing, intoxicating beverages, narcotics, firearms or dangerous weapons, telecommunications devices, tattooing equipment, electronic devices, or any other object or instrumentality intended for use as a tool in the planning or aiding in an escape or attempted escape by a youth in a local Juvenile Detention Facility in the state.

Delinquent Act—an act committed by a child of 10 years of age or older, which if committed by an adult is designated an offense under the statutes or ordinances of this state, or of another state if the offense occurred there or under federal law, except traffic violations.

Department (DCFS)—the Louisiana Department of Children and Family Services.

Direct Care Staff—a person counted in the staff/youth ratio, whose duties include the direct care, supervision, guidance, and protection of youth. This may include staff such as administrative staff that has the required background clearances and appropriate training that may serve temporarily as a detention officer.

Electronic Security Wand Scanner—an electronic hand-held security scanner used to detect metal weapons in a detention facility.

Frisk—to search a youth for something concealed, including a weapon or illegal contraband, by passing the hands quickly over clothes or through pockets.

Governing Body—a parent agency exercising administrative control over a facility.

Grievance Procedure—a method for the expression and resolution of youth's grievances or complaints.

Inspection—a thorough investigatory review of information, including written records and interviews with staff and youth, to determine whether and the extent to which a facility's policies, practices, and protocols comply with the standards.

Juvenile Detention Facility (JDF)—a facility that provides temporary safe and secure custody of youth during the pendency of juvenile proceedings, when detention is the least restrictive alternative available to secure the appearance of the youth in court or to protect the safety of the child or the public, as described in R.S. 15:1110.

Mechanical Restraints—an approved professionally manufactured mechanical device to aid in the restriction of a person's bodily movement. The following are approved mechanical restraint devices:

1. Ankle Cuffs—metal, cloth or leather band designed to be fastened around the ankle to restrain free movement of the legs.
2. Anklets—cloth or leather band designed to be fastened around the ankle or leg.
3. Handcuffs—metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms.
4. Waist Band—a cloth, leather, or metal band designed to be fastened around the waist used to secure the arms to the sides or front of the body.
5. Wristlets—a cloth or leather band designed to be fastened around the wrist or arm which may be secured to a waist belt.
6. Plastic Cuffs—plastic devices designed to be fastened around the wrist or legs to restrain free movement of hands, arms or legs.

Medical Isolation—the restriction of a youth to a sleeping room specifically for medical reasons that may pose a threat to himself/herself, or others at the facility.

Neglect—the refusal or unreasonable failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired.

Pat-down Search—a running of the hands over the clothed body of a youth by a staff member to determine whether the youth possesses contraband.

Physical Escort Techniques—the touching or holding a youth with a minimum use of force for the purpose of directing the youth's movement from one place to another. A physical escort is not considered a physical restraint.

Physical Restraint—a professionally trained restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints.

Protective Isolation—is the restriction of a youth to a designated sleeping room or dorm due to his/her safety being threatened.

Qualified Medical Professional—health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for youth within the scope of his or her professional practice.

Qualified Mental Health Professional—a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for youth within the scope of his or her professional practice.

Relatives—spouses, children of spouses, brothers, sisters, parents, brother-in-law, sister-in-law, aunts, uncles, nieces, nephews, grandparents, and first cousins.

Room Confinement—the restriction of a youth to his/her assigned sleeping room, due to disciplinary reasons.

Room Isolation - the restriction of a youth to a room that is separated from the general population, due to current acting out behavior.

Shall—must or mandatory.

Special Needs—the individual requirements (as for education) of a person with a mental, emotional, developmental, or physical disability or a high risk of developing one.

Status Offense—an allegation that a youth is truant or has willfully and repeatedly violated lawful school rules, ungovernable, a runaway, committed an offense applicable only to youth, or a youth under age 10 years of age who has committed any act which if committed by an adult would be a crime under any federal, state, or local law.

Strip Search—a search that requires a person to remove some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person.

Substantial Bodily Harm—physical injury serious enough that a prudent person would conclude that the injury required professional medical attention. It does not include minor bruising, the risk of minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

Support Staff—a person who works directly for the facility or a person who provides direct services to youth in a facility on a recurring basis with no discipline authority over youth.

Unencumbered Space—usable space that is not occupied by furnishing or fixtures.

Validated Mental Health Screening Tool—an instrument that has been scientifically tested to determine that it accurately measures what it purports to measure.

Volunteer—an individual who works at the facility and whose work is uncompensated. This may include students, interns, tutors, counselors, persons providing recreational activities including religious service, and other non-staff

individuals who may or may not interact with youth in a supervised or unsupervised capacity.

Waiver—an exemption granted by the secretary of the department, or designee, from compliance with a standard that will not place the youth or staff member at risk.

Youth—an individual placed in a JDF in accordance with limitations and exceptions noted in state law who is not less than 10 years of age nor older than 21 years of age.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7507. Licensing Requirements

A. General Provisions

1. All providers in operation prior to January 1, 2013 may continue to operate without a license if timely application for a license has been made to DCFS. Providers shall make application to the department within 90 days of the effective date of this rule. All requirements herein shall be met, unless otherwise expressly stated in writing by the department prior to the issuance of a license.

2. Effective January 1, 2013, it is mandatory to obtain a license from the department prior to beginning operation.

3. Anyone applying for a license after the effective date of these standards shall meet all of the requirements herein, unless otherwise stated in these regulations or other official written policy of the department.

4. Two licenses shall not be issued simultaneously for the same physical address. If a second license is issued for a physical address which is already licensed, the second license shall be null and void.

5. The provider shall allow representatives of DCFS access to the facility, the youth, and all files and records at any time during hours of operation and/or anytime youth are present. DCFS staff shall be allowed to interview any staff member or youth. DCFS staff shall be admitted immediately and without delay, and shall be given access to all areas of a facility, including its grounds. If any portion of a facility is set aside for private use by the facility's owner, DCFS representatives shall be permitted to verify that no youth is present in that portion and that the private areas are inaccessible to youth.

6. All new construction to a currently licensed facility or renovation requires approval from the Office of State Fire Marshal, Office of Public Health, City Fire (if applicable), and the Licensing Section prior to occupying the new space.

7. Neither providers nor staff shall permit an individual convicted of a sex offense as defined in R.S. 15:541, other than youthful offenders convicted of such offense and committed to the custody of that specific facility, to have physical access to a JDF.

8. Providers shall comply with the requirements of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq. (ADA).

9. If the facility is located in the same building or on the grounds of any type of adult jail, lockup, or corrections facility, it shall be a separate, self-contained unit. All applicable federal and state laws pertaining to the separation of youth from adult inmates will apply.

10. The population using housing or living units shall not exceed the designated or rated capacity of the facility.

11. All providers shall adhere to all polices with regard to practice and procedures.

12. DCFS is authorized to determine the period during which the license shall be effective. A license shall be valid until the expiration date shown on the license, unless the license is modified, extended, revoked, suspended, or terminated.

13. Once a license has been issued, DCFS shall conduct licensing inspections at intervals (not to exceed one year) deemed necessary by DCFS to determine compliance with licensing standards, as well as other required statutes, laws, ordinances, rules, and regulations. These inspections shall be unannounced.

14. Whenever DCFS is advised or has reason to believe that any person, agency, or organization that holds a license or has applied for a license is operating in violation of the JDF regulations or laws, DCFS shall conduct an investigation to ascertain the facts.

B. Initial Licensing Application Process

1. An initial application for licensing as a JDF shall be obtained from DCFS. A completed initial license application packet along with a fee as required by law shall be submitted to and approved by DCFS prior to an applicant providing JDF services. The completed initial licensing packet shall include:

- a. application and fee as established by law;
- b. current Office of State Fire Marshal approval for occupancy;
- c. current Office of Public Health, Sanitarian Services approval;
- d. current city fire department approval, if applicable;
- e. city or parish building permits office approval, if applicable;
- f. current local zoning approval, if applicable;
- g. current department of education approval, if applicable;
- h. copy of proof of current general liability and property insurance for JDF;
- i. copy of proof of insurance for vehicle(s) used to transport youth;
- j. organizational chart or equivalent list of staff titles and supervisory chain of command;
- k. administrator resume and proof of educational requirements;
 - l. list of consultant/contract staff to include name, contact information, and responsibilities;
 - m. copy of table of contents of all policy and procedure manuals;
 - n. copy of evacuation plan;
 - o. copy of facility rules and regulations;
 - p. copy of grievance process; and
 - q. a floor sketch or drawing of the premises to be licensed.

2. If the initial licensing packet is incomplete, the applicant will be notified in writing of the missing information and will have 14 calendar days to submit the additional requested information. If the department does not receive the additional requested information within the 14 calendar days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a JDF shall submit a new initial

licensing packet with a new application fee to start the initial licensing process. Once the department has determined the application is complete, the applicant will be notified to contact the department to schedule an initial inspection. If an applicant fails to contact the department and coordinate the initial inspection within 45 calendar days of the notification, the initial licensing application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a JDF shall submit a new initial licensing packet with a new application fee to re-start the initial licensing process.

C. Initial Licensing Inspection

1. In accordance with R.S. 15:1110E, prior to the initial license being issued to the JDF, an initial licensing inspection shall be conducted on-site at the JDF to assure compliance with all licensing standards. No youth shall be provided services by the JDF until the initial licensing inspection has been performed and DCFS has issued a license. The licensing inspection shall not be completed if the provider is found in operation prior to the issuance of a license and the application shall be denied.

2. In the event the initial licensing inspection finds the JDF is compliant with all licensing laws and standards, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, DCFS may issue a license to the JDF. The license shall be valid until the expiration date shown on the license, unless the license is modified, extended, revoked, suspended, or terminated.

3. The license shall be displayed in a prominent place at the JDF.

D. Fees

1. An annual fee as established by law shall be payable to DCFS 30 days prior to the date of expiration of the current license by certified check, business check, or money order. Non-payment of fee by due date may result in revocation or non renewal of the license.

2. Other license fees include:

a. a replacement fee as established by law shall be submitted to the department for replacing a license when changes are requested, i.e., name change, age range, etc. No replacement charge shall be incurred when the request coincides with the regular renewal of a license;

b. a processing fee as established by law shall be submitted to the department for issuing a duplicate license with no changes.

E. Renewal of License

1. The license shall be renewed on an annual basis prior to its expiration date.

2. The JDF shall submit, at least 30 days prior to its license expiration date, a completed renewal application form, and fee as established by law. The following documentation shall also be included:

- a. Office of Fire Marshal approval;
- b. Office of Public Health, Sanitarian Services approval;
- c. city fire department approval, if applicable;
- d. copy of proof of current general liability and property insurance for JDF; and
- e. copy of proof of insurance for vehicle(s) used to transport youth.

3. Prior to renewing the JDF license, an on-site inspection shall be conducted to assure compliance with all

licensing laws and standards. If the JDF is found to be in compliance with the licensing laws and standards, and any other required statutes, laws, ordinances, or regulations, the license shall be renewed for a 12-month period.

4. In the event the annual licensing inspection finds the JDF is non-compliant with any licensing laws or standards, or any other required statutes, ordinances or regulations but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the youth, the JDF shall be required to submit a corrective action plan to the department for approval. The department shall specify the timeline for submitting the corrective action plan based on such non-compliance or deficiencies cited but no later than 14 calendar days from the date of notification. The corrective action plan shall include a description of how the deficiency shall be corrected and the date by which correction(s) shall be completed. Failure to submit an approved corrective action plan timely shall be grounds for non-renewal of the license.

5. If it is determined that such noncompliance or deficiencies have not been corrected prior to the expiration of the license, the department may issue an extension of the license not to exceed two months.

6. When it is determined by the department that such noncompliance or deficiencies have been corrected, a license will be issued for a period not to exceed 12 months.

7. If it is determined that all areas of noncompliance or deficiencies have not been corrected prior to the expiration date of the extension, DCFS may revoke the license.

F. Notification of Changes

1. A license is not transferable to another person, entity, or location.

2. When a JDF changes location, it is considered a new operation and a new application and fee as required by law for licensure shall be submitted 30 days prior to the anticipated move. An onsite inspection verifying compliance with all standards is required prior to youth occupying the new space.

3. When a JDF is initiating a change in ownership, a written notice shall be submitted to DCFS prior to the ownership change. Within seven calendar days of the change of ownership, the new owner shall submit a completed application, the applicable licensing fee, and a copy of bill of sale or a lease agreement. A change of ownership occurs when the license and/or facility is transferred from one natural or juridical person to another, or when an officer, director, member, or shareholder not listed on the initial application exercises or asserts authority or control on behalf of the entity. The addition or removal of members of a board of directors shall not be considered a change of ownership where such addition or removal does not substantially affect the entity's operation and shall require only notice be given to the DCFS of such addition or removal.

4. The JDF shall provide written notification to the department within 30 calendar days of changes in the administrator. A statement with supporting documentation of qualifications for the new administrator shall be submitted to DCFS.

G. Denial, Revocation, or Non-renewal of License

1. An application for a license may be denied, a license may be revoked, or a license renewal may be denied for any of the following reasons:

a. cruelty or indifference to the welfare of the youth in care;

b. violation of any provision of the standards, rules, regulations, or orders of the department;

c. disapproval from any agency whose approval is required for licensing;

d. any validated instance of abuse, neglect, corporal punishment, physical punishment, or cruel, severe, or unusual punishment, if the JDF administrator is responsible or if the staff member who is responsible remains in the employment of the licensee;

e. the JDF is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure;

f. falsifying or altering documents required for licensure;

g. the owner, administrator, officer, board of directors member, or any person designated to manage or supervise the JDF or any staff providing care, supervision, or treatment to a youth of the JDF has been convicted of or pled guilty or nolo contendere to any offense listed in R.S. 15:587.1. A copy of a criminal record check performed by the Louisiana State Police (LSP) or other law enforcement entity, or by the Federal Bureau of Investigation (FBI), or a copy of court records in which a conviction or plea occurred, indicating the existence of such a plea or conviction shall create a rebuttable presumption that such a conviction or plea exists;

h. the JDF, after being notified that an officer, administrator, board of directors member, manager, supervisor or any staff has been convicted of or pled nolo contendere to any offense referenced above, allows such officer, director, or staff to remain employed, or to fill an office of profit or trust with the JDF. A copy of a criminal record check performed by the LSP or other law enforcement entity, or by the FBI, or a copy of court records in which a conviction or plea occurred, indicating the existence of such a plea or conviction shall create a rebuttable presumption that such a conviction or plea exists;

i. failure of the owner, administrator or any staff to report a known or suspected incident of abuse or neglect to child protection authorities;

j. revocation or non-renewal of a previous license issued by the state of Louisiana;

k. a history of non-compliance with licensing statutes or standards, including but not limited to failure to take prompt action to correct deficiencies, repeated citations for the same deficiencies, or revocation or denial of any previous license issued by DCFS;

l. failure to timely submit an application for renewal or to timely pay fees as required by law; and/or

m. operating any unlicensed JDF and/or program.

H. Disqualification of Facility and/or Provider

1. If a facility's license is revoked or not renewed due to failure to comply with state statutes or licensing rules or surrendered to avoid adverse action, DCFS may elect not

accept a subsequent application from the provider for that facility, or any new facility, up to but not exceeding a period of 24 months after the effective date of revocation, non-renewal due to adverse action, or surrender to avoid adverse action, or for a period up to but not exceeding 24 months after all appeal rights have been exhausted, whichever is later (the disqualification period). The effective date of a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed. Any pending application by the same provider shall be treated as an application for a new facility for purposes of this section and may be denied and subject to the disqualification period. Any subsequent application for a license shall be reviewed by the Secretary or designee prior to a decision being made to grant a license. DCFS reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

2. If a provider has multiple licensed facilities and one of the facility's licenses is revoked or not renewed, a capacity increase shall not be granted at any of the existing licensed facilities for a minimum period of 24 months after the effective date of revocation or non-renewal, or for a minimum period of 24 months after all appeal rights have been exhausted, whichever is later.

3. Any voluntary surrender of a license by a provider facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for disqualification purposes and shall trigger the same disqualification period as if the license had actually been revoked.

4. If the applicant has had a history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, DCFS may refuse to accept a subsequent application from that applicant for a minimum period of 24 months after the effective date of denial.

5. With respect to an application in connection with the revoked, denied, or not renewed facility, the disqualification period provided in this Section shall include any affiliate of the provider.

6. If a facility's license was revoked due solely to the disapproval from any agency whose approval is required for licensure or due solely to the facility being closed and there are no plans for immediate re-opening within 30 calendar days and no means of verifying compliance with minimum standards for licensure, the disqualification rule (or period) may not apply. DCFS may accept a subsequent application for a license that shall be reviewed by the secretary or designee prior to a decision being made to grant a license. DCFS reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

7. In the event a license is revoked or renewal is denied, (other than for cessation of business or non-operational status), or voluntarily surrendered to avoid adverse action any owner, officer, member, manager, or administrator of such licensee may be prohibited from owning, managing, or operating another licensed facility for a period of not less than 24 months from the date of the final disposition of the revocation or denial action. The lapse of 24 months shall not automatically restore a person

disqualified under this provision eligibility for employment. DCFS, at its sole discretion, may determine that a longer period of disqualification is warranted under the facts of a particular case.

I. Appeal Process

1. The DCFS Licensing Section, shall advise the administrator or owner in writing of the reasons for non-renewal or revocation of the license, or denial of an application, and the right of appeal. If the administrator or owner is not present at the facility, delivery of the written reasons for such action may be made to any staff of the facility. Notice to a staff shall constitute notice to the facility of such action and the reasons therefore. A request for appeal shall include a copy of the letter from the Licensing Section that notes the reasons for revocation, denial, or non-renewal, together with the specific areas of the decision the appellant believes to be erroneous and/or the specific reasons the decision is believed to have been reached in error, and shall be mailed to: Department of Children and Family Services, Appeals Section, P.O. Box 2944, Baton Rouge, LA 70821-9118.

2. A provider may appeal the revocation or non-renewal of a license by submitting a written request to appeal the decision along with a copy of the letter within 15 calendar days of receipt of the letter notifying of the revocation or non-renewal. Provider may continue to operate legally throughout the appeals process. Provider shall be issued a license noting that the provider is in the appeal process.

3. If provider's license expires during the appeal process, the provider shall submit a licensing renewal application and a copy of the satisfactory criminal background clearance for every owner. Each provider is solely responsible for obtaining the licensing application form. The licensing application and full licensure fee as well as copies of the criminal background clearances for all owners shall be received on or postmarked by the last day of the month in which the license expires, or the provider shall cease operation at the close of business by the expiration date noted on the license.

4. A provider may appeal the denial of an application for a license by submitting a written request to appeal the decision along with a copy of the letter within 30 calendar days of receipt of the letter notifying of the denial of application.

5. The DCFS Appeals Section shall notify the Division of Administrative Law of receipt of an appeal request. Division of Administrative Law shall conduct a hearing. The appellant will be notified by letter of the decision, either affirming or reversing the original decision.

6. If the decision of DCFS is affirmed or the appeal dismissed, the provider shall terminate operation of the JDF immediately. If the provider continues to operate without a license, the DCFS may file suit in the district court in the parish in which the facility is located for injunctive relief.

7. If the decision of DCFS is reversed, the license will be re-instated and the appellant may continue to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7509. Administration

A. Governing Body

1. The provider shall have an identifiable governing body with responsibility and authority over the policies, procedures, and activities of the facility.

2. The provider shall have documents identifying:

- a. all members of the governing body;
- b. business address;
- c. the term of their membership, if applicable;
- d. officers of the governing body, if applicable;
- e. the terms of office of all officers, if applicable;
- f. officer responsibilities.

3. When the governing body is composed of more than one person, there shall be recorded minutes of all formal meetings and bylaws specifying frequency of meetings and quorum requirements.

B. Accessibility of Administrator

1. There shall be a single administrator, or designee, on site with authority and responsibility for the daily implementation and supervision of the facility's overall operation.

2. The administrator, or designee, shall be accessible to DCFS 24 hours per day, seven days per week.

C. Statement of Philosophy and Goals

1. The provider shall have a written statement describing its philosophy and goals.

D. Policies and Procedures

1. The provider shall have written policies and procedures approved by the administrator and/or governing body that address, at a minimum, the following:

- a. detecting and reporting suspected abuse and neglect;
- b. intake, to include classification procedures and release;
- c. behavior support and intervention program;
- d. youth grievance process;
- e. retention of youth files;
- f. emergency and safety procedures including medical emergencies;
- g. staff intervention/restraints;
- h. room isolation;
- i. room confinement/due process;
- j. incidents;
- k. health care (dental, mental, and medical);
- l. youth rights;
- m. infection control to include blood borne pathogens;
- n. confidentiality;
- o. training;
- p. environmental issues;
- q. physical plant;
- r. access issues;
- s. safety;
- t. security;
- u. suicide prevention and emergency procedures in case of suicide attempt; and
- v. sexual misconduct including but not limited to the following:
 - i. right to be free from sexual misconduct and from retaliation for reporting sexual misconduct;

ii. dynamics of sexual misconduct in confinement;

iii. common reactions of sexual misconduct victims; and

iv. policy for prevention and response to sexual misconduct.

2. The policies and procedures for operating and maintaining the facility shall be specified in a manual that is accessible to all staff and the public. The policies and procedures listed in Section 7509.D.1 above shall be reviewed at least annually, updated as needed, signed, and dated by the administrator or a representative of the governing body.

3. New or revised policies and procedures shall be disseminated to designated staff, volunteers, and to the youth, as applicable.

E. Facility Rules and Regulations

1. The rules and regulations shall be written in simple, clear, and concise language that most youth can understand and be specific to ensure that the youth know what is expected of them.

2. A staff member shall read the rules and regulations or provide a video presentation of these rules to each youth at the time of admission or within 24 hours after admission, and provide the youth a written copy.

3. Reasonable accommodations shall be made for those youth with limited English proficiency or disabilities.

4. A copy of the rules and regulations shall be posted in each of the common areas and in the living units.

5. Enforcement

a. Rule violations and corresponding staff actions shall be recorded in the youth's file.

b. Disciplinary sanctions shall be objectively administered and proportionate to the gravity of the rule and the severity of the violation.

c. If a youth is alleged to have committed a crime while in the facility, at the discretion of the administrator, the case may be referred to a law enforcement agency for possible investigation and/or prosecution.

d. If a case is referred to a law enforcement agency for possible investigation and/or prosecution, efforts shall be made as soon as possible to notify or attempt to notify the parent/guardian, and the attorney of record of the incident and referral.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7511. Facility Responsibilities

A. Personnel

1. Policies and Procedures

a. The provider shall have written policies and procedures that establish the provider's staffing, recruiting, and review procedures for staff. The personnel policy manual shall be available for staff and shall include a minimum of the following areas:

- i. organization chart (table of organization);
- ii. recruitment to include equal employment opportunity provisions;
- iii. job descriptions and qualifications, and if applicable, a physical fitness policy;

- iv. personnel files and performance reviews;
- v. staff development, including in-service training;
- vi. termination;
- vii. employee/management relations, including disciplinary procedures and grievance and appeals procedures; and
- viii. employee code of ethics.

b. A written policy and procedure shall require that each staff sign a statement acknowledging access to the policy manual.

2. Job Qualifications

a. The administrator shall meet one of the following qualifications upon hire:

- i. a bachelor's degree plus two years experience relative to the population being served; or
- ii. a master's degree; or
- iii. six years of administrative experience in health or social services, or a combination of undergraduate education and experience for a total of six years.

b. Direct Care Staff shall be at least 18 years of age and have a high school diploma or equivalency at the time of hire.

3. Volunteers

a. If the provider utilizes volunteers, a written policy and procedure shall establish responsibility for the screening and operating procedures of the volunteer program.

b. Program Coordination

i. There shall be a staff member who is responsible for operating a volunteer service program for the benefit of youth.

ii. The provider shall specify the lines of authority, responsibility, and accountability for the volunteer service program.

c. Screening and Selection

i. Relatives of a youth shall not serve as a volunteer with the youth to whom they are related or in the facility where that youth is detained.

d. Professional Services

i. Volunteers shall perform professional services only when they are certified or licensed to do so.

B. Criminal Background Clearance

1. No staff of the facility shall be hired until such person has submitted his/her fingerprints to the Louisiana Bureau of Criminal Identification and Information so that it may be determined whether or not such person has a criminal conviction of a felony, or a plea of guilty, or nolo contendere of a felony, or a criminal conviction, or a plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, or any offense involving a juvenile victim. If it is determined that such a person has a conviction or has entered a plea of guilty or nolo contendere to a crime listed in R.S. 15:587.1(C) or any offense involving a juvenile victim, that person shall not be hired. No staff shall be present on the JDF premises until such a clearance is received.

2. The provider shall contact all prior institutional employers for information on substantiated allegations of sexual abuse consistent with federal, state, and local laws.

3. A criminal record check shall be conducted on all volunteers that interact with the youth. No volunteer of the

facility shall be allowed to work with youth until such person has submitted his/her fingerprints to the Louisiana Bureau of Criminal Identification and Information so that it may be determined whether or not such person has a criminal conviction, or a plea of guilty or nolo contendere to any offense included in R.S. 15:587.1, or any offense involving a juvenile victim. If it is determined that such a person has a conviction or has entered a plea of guilty or nolo contendere to a crime listed in R.S. 15:587.1(C) or any offense involving a juvenile victim, that person shall not be allowed to volunteer with youth at the JDF. No volunteer shall be present on the JDF premises until such a clearance is received.

C. Health Screening

1. All staff shall receive a physical examination prior to employment, including screening for infectious and contagious diseases prior to job assignment, in accordance with state and federal laws.

D. Performance Reviews

1. The provider shall conduct an annual written performance review of each staff and the results shall be discussed with the staff.

E. Drug-free Workplace

1. The provider shall have a written policy and procedure regarding a drug-free workplace for all staff.

F. Training and Staff Development

1. Policy and Procedure

a. The provider shall have written policies and procedures that require training and staff development programs, including training requirements for all categories of personnel.

b. Program Coordination and Supervision - the Program Coordinator shall ensure that the provider's staff development and training program is planned, coordinated and supervised.

2. Orientation

a. All new staff shall receive a minimum of 40 hours of orientation training before assuming any job duties. This training shall include, at a minimum, the following:

- i. philosophy, organization, program, practices and goals of the facility;
- ii. specific responsibilities of assigned job duties;
- iii. administrative procedures;
- iv. emergency and safety procedures including medical emergencies;
- v. youth's rights;
- vi. detecting and reporting suspected abuse and neglect;
- vii. infection control to include blood borne pathogens;
- viii. confidentiality;
- ix. reporting of incidents;
- x. intake to include classification procedures and release;
- xi. discipline and due process rights of incarcerated youth;
- xii. access to health care (dental, mental, and medical);
- xiii. crisis/conflict management, de-escalation techniques, and management of assaultive behavior, including when, how, what kind, and under what conditions

physical force, mechanical restraints, and room confinement, isolation may be used;

xiv. suicide prevention and emergency procedures in case of suicide attempt;

xv. sexual misconduct including but not limited to the following:

(a). youth's rights to be free from sexual misconduct, and from retaliation for reporting sexual misconduct;

(b). dynamics of sexual misconduct in confinement;

(c). common reactions of sexual misconduct victims; and

(d). agency policy for prevention and response to sexual misconduct.

3. First Year Training

a. Direct Care Staff shall receive an additional 120 hours of training during their first year of employment. This training shall include, at a minimum, the following:

i. Within the first 60 calendar days of employment:

(a). adolescent development for males and females; and

(b). first aid/CPR.

ii. Within the first year of employment:

(a). classification procedures to include intake screenings;

(b). an approved crisis/conflict intervention program;

(c). facility's policy and procedures for suicide prevention, intervention and response;

(d). lesbian, gay bisexual, transgender specific, cultural competence and sensitivity training;

(e). communication effectively and professionally with all youth;

(f). sexual misconduct including but not limited to the following:

(i). youth's rights to be free from sexual misconduct, and from retaliation for reporting sexual misconduct;

(ii). dynamics of sexual misconduct in confinement;

(iii.) common reactions of sexual misconduct victims; and

(iv). the agency policy for prevention and response to sexual misconduct.

(g). key control;

(h). universal safety precautions;

(i). effective report writing; and

(j). needs of youth with behavioral health disorders and intellectual disabilities and medication.

b. All support (non-direct care) staff shall receive an additional 40 hours of training during their first year of employment. The training shall include, at a minimum, the following:

i. philosophy, organization, program, practices and goals of the facility;

ii. specific responsibilities of assigned job duties;

iii. youth's rights;

iv. detecting and reporting suspected abuse and neglect (mandatory reporting guidelines);

v. infection control to include blood borne pathogens;

vi. confidentiality;

vii. reporting of incidents;

viii. discipline and due process rights of incarcerated youth;

ix. sexual misconduct including but not limited to the following:

(a). youth's rights to be free from sexual misconduct, and from the retaliation for reporting sexual misconduct;

(b). dynamics of sexual misconduct in confinement;

(c). common reactions of sexual misconduct victims; and

(d). agency policy for prevention and response to sexual misconduct.

x. first aid/ CPR; and

xi. basic safety and security practices.

4. Annual Training

a. All staff shall receive a minimum of 40 hours of training annually. This training shall include, at a minimum, the following:

i. classification procedures to include intake screenings;

ii. an approved crisis/conflict intervention program;

iii. facility's policy and procedures for suicide prevention, intervention and response;

iv. communication effectively and professionally with all youth;

v. sexual misconduct including but not limited to the following:

(a). youth's rights to be free from sexual misconduct, and from retaliation for reporting sexual misconduct;

(b). dynamics of sexual misconduct in confinement;

(c). common reactions of sexual misconduct victims-add additional; and

(d). the agency policy for prevention and response to sexual misconduct.

vi. key control;

vii. universal safety precautions;

viii. discipline and due process rights of incarcerated youth;

ix. detecting and reporting suspected abuse and neglect (mandatory reporting guidelines);

x. effective report writing; and

xi. needs of youth with behavioral health disorders and intellectual disabilities and medication.

5. Volunteer Training

a. All volunteers shall receive notification and acknowledge in writing their agreement to abide by the following prior to their beginning work and updated annually:

i. philosophy and goals of the facility;

ii. specific responsibilities and limitations;

iii. youth's rights;

iv. detecting and reporting suspected abuse and neglect;

- v. confidentiality;
- vi. reporting of incidents;
- vii. discipline and due process rights of incarcerated youth;
- viii. sexual misconduct including but not limited to the following:

(a). youth's rights to be free from sexual misconduct, and from retaliation for reporting sexual misconduct;

(b). dynamics of sexual misconduct in confinement;

(c). common reactions of sexual misconduct victims-add additional; and

(d). the agency policy for prevention and response to sexual misconduct.

- ix. basic safety and security practices.

G. Staffing Requirements

1. The provider shall have sufficient available staff to meet the needs of all of the youth.

2. At least two direct care staff shall be on duty at all times in the facility.

3. There shall be a minimum of 1 to 8 ratio of direct care staff to youth during the hours that youth are awake.

4. There shall be a minimum of 1 to 16 ratio of direct care staff to youth during the hours that youth are asleep.

5. Direct care staff of one gender shall be the sole supervisor of youth of the same gender during showers, physical searches, pat downs, or during other times in which personal hygiene practices or needs would require the presence of a direct care staff of the same gender.

6. Video and audio monitoring devices shall not substitute for supervision of youth.

7. The provider shall provide youth that have limited English proficiency with meaningful access to all programs and activities. The provider shall provide reasonable modifications to policies and procedures to avoid discrimination against persons with disabilities.

H. Record Keeping

1. Personnel Files

a. The provider shall maintain a current, accurate, confidential personnel file on each staff. This file shall contain, at a minimum, the following:

i. an application for employment, including the resume of education, training, and experience, including evidence of professional or paraprofessional credentials/certifications according to state law, if applicable;

ii. a criminal background check in accordance with state law;

iii. documentation of staff orientation and annual training;

iv. staff hire and termination dates;

v. documentation of staff current driver's license, if applicable;

vi. annual performance evaluations; and

vii. any other information, reports, and notes relating to the individual's employment with the facility.

2. Youth Files

a. Active Files—the provider shall maintain active files for each youth. The files shall be maintained in an accessible, standardized order and format. The files shall be current and complete and shall be maintained in the facility

in which the youth resides. The provider shall have sufficient space, facilities, and supplies for providing effective storage of files. The files shall be available for inspection by the department at all times. Youth files shall contain at least the following information:

i. youth's name, date of birth, social security number, previous home address, sex, religion, and birthplace;

ii. dates of admission and discharge;

iii. other identification data including documentation of court status, legal status or legal custody, and who is authorized to give consents;

iv. name, address, and telephone number of the legal guardian(s), and parent(s), if appropriate;

v. name, address, and telephone number of a physician and dentist;

vi. the pre-admission assessment and admission assessment;

vii. youth's history including family data, educational background, employment record, prior medical history, and prior placement history;

viii. a copy of the physical assessment report;

ix. continuing record of any illness, injury, or medical or dental care when it impacts the youth's ability to function or impacts the services he or she needs;

x. reports of any incidents of abuse, neglect, or incidents, including use of time out, personal restraints, or seclusion;

xi. a summary of releases from the facility;

xii. a summary of court visits;

xiii. a summary of all visitors and contacts including dates, name, relationship, telephone number, address, the nature of such visits/contacts and feedback from the family;

xiv. a record of all personal property and funds, which the youth has entrusted to the provider;

xv. reports of any youth grievances and the conclusion or disposition of these reports;

xvi. written acknowledgment that the youth has received clear verbal explanation and copies of his/her rights, the facility rules, written procedures for safekeeping of his/her valuable personal possessions, written statement explaining his/her rights regarding personal funds, and the right to examine his/her file;

xvii. all signed informed consents; and

xviii. a release order, as applicable.

b. Confidentiality and Retention of Youth Files

i. The provider shall maintain records in accordance with public records and confidentiality laws.

ii. The provider shall maintain the confidentiality and security of all records. Staff shall not disclose or knowingly permit the disclosure of any information concerning the youth or his/her family, directly or indirectly, to any unauthorized person.

I. Incident Reporting

1. Critical Incidents. The provider shall have written policies and procedures for documenting, reporting, investigating, and analyzing critical incidents.

a. The provider shall report any of the following critical incidents to parties noted in §7511.1.1.b below:

- i. suspected abuse;

- ii. suspected neglect;
- iii. injuries of unknown origin;
- iv. death;
- v. attempted suicide;
- vi. escape;
- vii. sexual assault;
- viii. any serious injury that occurs in a facility, including youth on youth assaults, that requires medical treatment; and/or

ix. injury with substantial bodily harm while in confinement, during transportation or during use of physical intervention.

b. The administrator or designee shall immediately report all critical incidents to the:

- i. parent/legal guardian;
- ii. law enforcement authority, if appropriate, in accordance with state law;
- iii. DCFS Licensing Section Management Staff;
- iv. defense counsel for the youth; and
- v. judge of record.

c. At a minimum, the incident report shall contain the following:

- i. date and time the incident occurred;
- ii. a brief description of the incident;
- iii. where the incident occurred;
- iv. any youth or staff involved in the incident;
- v. immediate treatment provided, if any;
- vi. symptoms of pain and injury discussed with the physician if applicable;
- vii. signature of the staff completing the report;
- viii. name and address of witnesses;
- ix. date and time the legal guardian, and other interested parties were notified;
- x. any follow-up required;
- xi. actions to be taken in the future to prevent a reoccurrence; and
- xii. any documentation of supervisory and administrative reviews.

d. Investigation of Abuse and Neglect

i. The provider shall submit a final written report of the incident to Licensing, if indicated, as soon as possible but no later than five calendar days following the incident.

ii. An internal investigation shall be conducted of any allegations involving staff and/or youth of abuse or neglect of a youth.

iii. Until the conclusion of the internal investigation, any person alleged to be a perpetrator of abuse or neglect may be placed on administrative leave or may be reassigned to a position having no contact with the complainant or any youth in the facility, relatives of the alleged victim, participants in a juvenile justice program, or individuals under the jurisdiction of the juvenile court. The provider shall take any additional steps necessary to protect the alleged victim and witnesses.

iv. At the conclusion of the internal investigation, the administrator or designee shall take appropriate measures to provide for the safety of the youth.

v. In the event the administrator is alleged to be a perpetrator of abuse or neglect, the governing body or commission shall:

(a). Conduct the internal investigation or appoint an individual who is not a staff of the facility to conduct the internal investigation.

(b). Place the administrator on administrative leave, until the conclusion of the internal investigation, or ensure the administrator has no contact with the youth in the facility, relatives of the alleged victim, participants in a youth justice program, or individuals under the jurisdiction of the youth court.

vi. Copies of all written reports shall be maintained in the youth's file.

J. Abuse and Neglect

1. Provider shall ensure staff adheres to a code of conduct that prohibits the use of physical abuse, sexual abuse, profanity, threats, or intimidation. Youth shall not be deprived of basic needs, such as food, clothing, shelter, medical care, and/or security.

2. In accordance with Article 603 of the Louisiana Youth's Code, all staff employed by a Juvenile Detention Facility are mandatory reporters. In accordance with Article 609 of the Louisiana Youth's Code, a mandatory reporter who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse or neglect or was a contributing factor in a child's death shall report in accordance with Article 610 of the Louisiana Youth's Code.

K. Grievance Procedure

1. The provider shall have a written policy and procedure which establishes the right of every youth and the youth's legal guardian(s) to file grievances without fear of retaliation.

2. The written grievance procedure shall include, but not be limited to:

a. A formal process for the youth and the youth's legal guardian(s) to file grievances that shall include procedures for filing verbal, written, or anonymous grievances. If written, the grievance form shall include the youth's name, date, and all pertinent information relating to the grievance.

b. A formal process for the provider to communicate with the youth about the grievance within 24 hours and to respond to the grievance in writing within five calendar days.

c. A formal appeals process for provider's response to grievance.

3. Assistance by staff not involved in the issue of the grievance shall be provided if the youth requests.

4. Documentation of any youth's or youth's legal guardian(s) grievance and the conclusion or disposition of these grievances shall be maintained in the youth's file. This documentation shall include any action taken by the provider in response to the grievance and any follow up action involving the youth.

5. The provider shall maintain a log documenting all verbal, written, and/or anonymous grievances filed and the manner in which they were resolved.

6. A copy of the grievance and the resolution shall be given to the youth, a copy maintained in the youth's file, and a copy in a central grievance file.

L. Quality Improvement

1. The provider shall have a written policy and procedure for maintaining a quality improvement program to include:

- a. systematic data collection and analysis of identified areas that require improvement;
- b. objective measures of performance;
- c. periodic review of youth files;
- d. quarterly review of incidents and the use of personal restraints and seclusion to include documentation of the date, time and identification of youth and staff involved in each incident; and
- e. implementation of plans of action to improve in identified areas.

2. Documentation related to the quality improvement program shall be maintained for at least two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7513. Admission and Release

A. Limitations for Admission

1. Pre-admission criteria shall limit eligibility to youth likely to commit a serious offense pending resolution of their case, youth likely to fail to appear in court or youth held pursuant to a specific court order for detention.

2. Status offenders shall be detained at the facility only in accordance with state law, or if they have violated a valid court order and have received due process protections and consideration of less restrictive alternatives to include as required by the Federal Juvenile Justice and Delinquency Prevention Act.(OJJDP Act 42 U.S.C.5633)

3. Youth with serious medical, mental health needs, or youth who are detectably intoxicated are not admitted into the facility unless and until appropriate medical professionals clear them. Youth transferred from or cleared by outside medical or mental health facilities are admitted only if the facility has the capacity to provide appropriate ongoing care.

B. Intake on Admission

1. The provider shall have written policies and procedures regarding admission to the facility. Upon admission to the facility, the following shall be adhered to:

- a. staff shall review inactive files from any previous admission to obtain history on the youth;
- b. each youth shall be informed of the process at the initiation of intake;
- c. staff shall review paperwork with law enforcement; and
- d. staff shall conduct electronic security wand scanner, frisk, and search of the youth.

2. Youth shall be processed into the facility within four hours of admission. Intake for the juvenile justice system shall be available either onsite or through on-call arrangements 24 hours a day, seven days a week.

3. Screenings shall include approaches that ensure that available medical/mental health services are explained to youth in a language suitable to his/her age and understanding.

4. All screenings shall be conducted by a qualified medical/mental health professional or staff who have

received instruction and training by a qualified medical/mental health professional.

5. Screenings conducted by trained staff shall be reviewed by a qualified medical/mental health professional within 72 hours of admission.

6. The screenings shall occur within two hours of presentation for admission.

7. The screenings shall be in a confidential setting.

8. When a youth shows evidence of suicide risk, the facility's written procedures governing suicide intervention shall be immediately implemented.

C. Admission Screenings

1. Mental Health Screening

a. The provider shall use a standardized, validated mental health screening tool to identify youth who may be at risk of suicide or who may need prompt mental health services. Provider will ensure that persons administering the mental health screening tool are annually trained/re-trained in its administration and the use of its scores, as recommended by the author of the screening tool if more frequent than annually.

b. All youth whose mental health screening indicates the need for an assessment shall be seen by a qualified mental health professional within 24 hours of admission.

2. Medical Screening

a. The screening shall include:

i. Inquiry into current and past illnesses, recent injuries, and history of medical and mental health problems and conditions, including:

(a) medical, dental, and psychiatric/mental health problems;

(b) current medication;

(c) allergies;

(d) use of drugs or alcohol, including types, methods of use, amounts, frequency, time of last use, previous history of problems after ceased use, and any recent hiding of drugs in his/her body;

(e) recent injuries (e.g. at or near the time of arrest);

(f) pregnancy status; and

(g) names and contact information for physicians and clinics treating youth in the community.

b. During this screening, staff shall observe:

i. behavior and appearance, indications of alcohol or drug intoxication, state of consciousness, and sweating;

ii. indications of possible disabilities to include but not limited to vision, hearing, intellectual disabilities and mobility limitations;

iii. conditions of skin, bruises, lesions, yellow skin, rash, swelling, and needle marks or other indications of drug use or physical abuse; and

iv. tattoos and piercings.

c. After the screening, staff shall refer the following youth for needed services:

i. Youth who are identified in the screening as requiring additional medical services shall be referred and receive an expedited medical follow-up within 24 hours or sooner if medically necessary.

ii. When a youth shows evidence or alleges abuse or neglect by a parent, guardian, or relative, a staff member

shall immediately contact law enforcement and DCFS. In situations where a youth shows evidence of or alleges abuse by law enforcement officials, the Parish District Attorney's Office shall be notified.

D. Processing

1. Staff shall document in the youth's file that the youth was allowed to attempt to contact parents/guardians by phone within six hours of arrival at the facility.

2. The provider shall provide the youth food regardless of the time of arrival.

3. Within 24 hours of admission, youth shall receive a written and oral orientation and documentation of the orientation shall be placed in the youth's file.

4. The orientation shall include the following:

- a. identification of key staff and roles;
- b. policy on contraband and searches;
- c. due process protections;
- d. grievance procedures;
- e. access to emergency and routine health and mental health care;
- f. housing assignments;
- g. youth rights;
- h. access to education, programs, and recreational materials;
- i. policy on use of force, restraints, and isolation;
- j. behavior management system;
- k. emergency procedures;
- l. how to report problems at the facility such as abuse, feeling unsafe, and theft;
- m. non-discrimination policies;
- n. a list of prohibited practices; and
- o. facility rules and regulations.

5. Youth shall be showered and given uniforms and toiletry articles. The youth's own clothing may be laundered, then stored and ready for their release. If the youth refuses to have clothing laundered, there shall be documentation in the youth's file of the refusal.

6. Youth admitted to the facility shall be presented in court for a continued custody hearing within 72 hours or released as required in CC Article 819.

E. Admission Assessments

1. Mental Health Assessment

a. Youth shall receive a mental health assessment performed by a qualified mental health professional within 72 hours unless the youth was assessed within 24 hours of admission. The assessment shall include:

- i. history of psychiatric hospitalizations and outpatient treatment (including all past mental health diagnoses);
- ii. current and previous use of psychotropic medication;
- iii. suicidal ideation and history of suicidal behavior;
- iv. history of drug and alcohol use;
- v. history of violent behavior;
- vi. history of victimization or abuse (including sexual victimization and domestic violence);
- vii. special education history;
- viii. history of cerebral trauma or seizures;
- ix. emotional response to incarceration and arrest;

and

x. history of services for intellectual/developmental disabilities.

2. Medical Assessment

a. Youth shall receive a medical assessment, performed by a qualified medical professional within 72 hours following admission. The medical assessment shall include the following:

- i. a review with the parent or legal guardian (phone or in person) of the physical issues of the youth;
- ii. detailed history of potentially preventable risks to life and health including smoking, drug and alcohol use, unsafe sexual practices, eating patterns, and physical activity;
- iii. contact with physician(s) in the community as needed to ensure continuity of medical treatment;
- iv. record of height, weight, pulse, blood pressure, and temperature;
- v. vision and hearing screening;
- vi. testing for pregnancy;
- vii. review of screening results and collection of additional data to complete the medical, dental, and mental health histories;
- viii. review of immunization history, if available, and attempt to notify parent(s)/guardian(s) of the needed immunization records;
- ix. testing for sexually transmitted infections, consistent with state recommendations;
- x. review of the results of medical examinations and tests, and initiation of treatment when appropriate; and
- xi. identification of signs and symptoms of victimization or abuse including sexual victimization and domestic violence.

b. Youth shall receive a Mantoux Tuberculin skin test within 72 hours of arrival at the facility, unless documentation has been received that a Mantoux Tuberculin skin test was completed in the last six months.

F. Population Management

1. The facility staff shall review the institutional population on a daily basis to ensure that the institutional population does not exceed its capacity.

G. Classification Decisions

1. The provider shall have written policies and procedures regarding housing and programming decisions. The administrator, or designee, will review, on a weekly basis, the process and any decisions that depart from established policies, and shall document such review and any departure from those policies.

2. Classification policies shall include potential safety concerns when making housing and programming decisions including:

- a. separation of younger from older youth;
- b. physical characteristics to include height, weight, and stature;
- c. separation of genders;
- d. separation of violent from non-violent youth;
- e. maturity;
- f. presence of mental or physical disabilities;
- g. suicide risk;
- h. alleged sex offenses;
- i. criminal behavior;

j. specific information about youth who need to be separated from each other (not just general gang affiliation); and

k. identified or suspected risk to include medical, escape, and security.

3. Youth shall be assigned to a room based on classification and will be reclassified if changes in behavior or status are observed.

4. Decisions for housing or programming of youth who are or are perceived to be gay, lesbian, bisexual, or transgender youth on the basis of their actual or perceived sexual orientation shall be made on an individual basis in consultation with the youth and the reason(s) for the particular treatment shall be documented in the youth's file. The administrator or designee shall review each decision.

5. When necessary, staff shall develop individualized classification decisions to provide for the safety of particular youth.

H. Release Procedures

1. The provider shall have a written policy and procedure for releasing youth to include, but not limited to, the following:

- a. verification of identity of the person who the youth is being released to;
- b. verification that a release order is obtained;
- c. completion of release arrangements, including the person or agency to whom the youth is to be released;
- d. return of personal property;
- e. completion of any pending action, such as claims for damaged or lost possessions;
- f. notification of arrangements for medical follow-up when needed, including continuity of medications; and
- g. instructions on forwarding of mail.

2. The provider shall have a written policy and procedure for the temporary release of youth for escorted and unescorted day leaves into the community for the following:

- a. needed medical and dental care;
- b. to visit ill family members or attend funerals; and
- c. to participate in community affairs and/or events

that would have a positive influence on the youth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7515. Youth Protections

A. Rights

1. The provider shall have written policies and procedures that ensure each youth's rights are guaranteed and protected.

2. A youth shall not be subjected to discrimination based on race, national origin, religion, sex, sexual orientation, gender identity, or disability.

3. A youth shall not be subjected to supervision or control by other youth. Supervision is to be exercised only by facility staff.

4. A youth has the right to be free from physical, verbal, or sexual assault by other youth or staff.

5. A youth shall not be required to work unless the activity is related to general housekeeping or as required by a court order or deferred prosecution agreement for community service restitution.

6. A youth shall not participate in medical, pharmaceutical, or cosmetic experiments.

7. A youth has the right to consult with clergy and participate in religious services in accordance with his/her faith, subject to the limitations necessary to maintain facility security and control. Youth shall not be forced to attend religious service and disciplinary action shall not be taken toward the youth who choose not to participate in such services.

8. Each youth shall be fully informed of these rights and of all rules and regulations governing youth conduct and responsibilities, as evidenced by written acknowledgment, at the time of admission of the receipt of a copy of youth rights, and when changes occur.

B. Access Issues

1. Telephone Usage

a. The provider shall have a written policy and procedure regarding telephone use.

b. Youth shall be permitted to have unrestricted and confidential telephone contact with professionals, such as attorneys, probation officers, and caseworkers.

c. In addition to the persons identified above in §7515.B.1.b, the youth shall be allowed a minimum of two free telephone calls per week, 10 minutes each to persons on the youth's approved list.

2. Mail/Correspondence

a. The provider shall have a written policy and procedure regarding youth sending and receiving mail/correspondence.

b. A youth's written correspondence shall not be opened or read by staff unless the administrator, or designee, has compelling reasons to believe the correspondence contains material which presents a clear and present danger to the health or safety of the youth, other persons, or the security of the facility. A record shall be maintained in the youth's file when mail is read by staff, documenting the specific reason why the mail was read, and signed by the administrator or designee. Mail may be opened by staff only in the presence of the youth with inspection limited to searching for contraband.

c. Written communication with specific individuals may be restricted by:

- i. the youth's court ordered rules of probation or parole;
- ii. the facility's rules of separation; or
- iii. a specific list of individuals furnished by the youth's parent/legal guardian indicating individuals who should not communicate with the youth.

d. Incoming correspondence from a restricted source shall be returned unopened to the sender. When mail is withheld from the youth, the reasons shall be documented in the youth's file and the youth shall be informed.

e. Youth shall be provided writing material and postage for the purpose of correspondence. Outgoing mail shall be sealed by the youth in the presence of staff.

f. Provisions shall be made to forward mail when the youth is released or transferred.

g. Money received in the mail shall be held for the youth in his/her personal property inventory or returned to the sender.

h. Incoming legal mail shall not be opened, read, or copied.

3. Visitation

- a. The parent/legal guardian shall be allowed to visit youth unless prohibited by the court.
- b. Visits with youth by attorneys and/or their representatives, and other professionals associated with the youth shall not be restricted and shall be conducted in private such that confidentiality may be maintained.
- c. Visits to youth may be restricted if it is determined by the administrator, or designee, that allowing the visit would pose a threat to the safety or security of the staff, other youth, visitors, or the facility. When a visit is restricted, the visitor(s) shall be notified at the time the determination is made. The reason why the visit was restricted shall be documented in the youth's file.
- d. The visitors of the youth shall be provided a written copy of the visitation policy and schedule.
- e. Visitation rules shall be posted in public view.
- f. Other individuals may be granted visits at the discretion of the administrator or his/her designee.
- g. Visitors who are under the influence of alcohol or drugs, in possession of contraband, exhibiting disruptive behavior, wearing improper attire, or unable to produce valid identification shall not be permitted to visit, and the occurrence shall be documented in the youth's file.
- h. A record shall be maintained in the youth's file of the names of all persons who visit the youth.
- i. A record shall be maintained in the youth's file of the names of individuals prohibited to visit with the youth and the reason(s) for the denial.
- j. Visiting hours shall be regularly scheduled so that visitors have an opportunity to visit at set times at least twice a week.
- k. Special visiting arrangements shall be made for visitors who cannot visit the youth during the regular visiting schedule.

C. Prohibited Practices

1. The provider shall have a written list of prohibited practices by staff. The following practices are prohibited:
 - a. the use of corporal punishment by any staff. Corporal punishment does not include the right of staff to protect themselves or others from attack, nor does it include the exercise of approved physical restraint as may be necessary to protect a youth from harming himself/herself or others;
 - b. any act or lack of care that injures or significantly impairs the health of any youth, or is degrading or humiliating in any way;
 - c. placement of a youth in unapproved quarters;
 - d. forcing a youth to perform any acts that could be considered cruel or degrading;
 - e. delegation of the staff's authority for administering discipline and privileges to other youth in the facility;
 - f. group punishment for the acts of an individual;
 - g. deprivation of a youth's meals or regular snacks;
 - h. deprivation of a youth's court appearances;
 - i. deprivation of a youth's clothing, except as necessary for the youth's safety;
 - j. deprivation of a youth's sleep;

k. deprivation of a youth's medical or mental health services;

1. physical exercise used for discipline, compliance, or intimidation;

m. use of any mechanical restraint as a punishment;

n. use of any chemical restraint; and

o. administration of medication for purposes other than treatment of a medical, dental, or mental health condition.

2. Use of force by staff on detained youth, through either acts of self-defense or the use of force to protect a youth from harming himself/herself or others, shall be immediately reported in writing to the administrator of the facility. A copy of the written report shall be maintained in the youth's file.

3. The youth shall receive a list of the prohibited practices. There shall be documentation of acknowledgement of receipt of the list of prohibited practices by the youth in the youth's file.

4. A list of prohibited practices shall be posted in the facility.

5. Any instance of a prohibited practice shall be documented immediately in the youths file.

D. Behavior Management System

1. The provider shall have a written policy and procedure for the behavior management system to be used to assist the youth in conforming to established standards of behavior and the rules and regulations of the facility.

2. The behavior management system shall provide written guidelines and parameters that are readily definable and easily understood by youth and staff.

3. The behavior management system shall be designed to provide graduated incentives for positive behavior and afford proportional measures of accountability for negative behavior.

4. Incentives shall not include any program, service, or physical amenity to which the youth is already entitled by these rules or federal, state, or local laws.

E. Room Confinement/Isolation/Segregation

1. The provider shall have written policies and procedures to be adhered to when a youth is confined to his/her sleeping room or an isolation room. They will include the use of room confinement, room isolation, protective isolation, and administrative segregation.

2. When a youth is placed in room confinement/isolation/segregation, the following shall be adhered to:

a. The administrator or designee shall approve the confinement of a youth to his/her sleeping room or an isolation room.

b. During the period of time a youth is in confinement, the youth shall be checked by a staff member at least every 15 minutes. The staff shall be alert at all times for indications of destructive behavior on the part of the youth, either self-directed or toward the youth's surroundings. Any potentially dangerous item on the youth or in the sleeping rooms shall be removed to prevent acts of self-inflicted harm.

c. The following information shall be recorded and maintained for that purpose prior to the end of the shift on which the restriction occurred:

- i. the name of the youth;
- ii. the date, time and type of the youth's restriction;
- iii. the name of the staff member requesting restriction;
- iv. the name of the administrator or designee authorizing restriction;
- v. the reason for restriction;
- vi. the date and time of the youth's release from restriction; and
- vii. the efforts made to de-escalate the situation and alternatives to isolation that were attempted.

d. Staff involved shall file an incident report with the shift supervisor by the end of the shift. The report shall outline in detail the presenting circumstances and a copy shall be kept in the youth's file and a central incident report file. At a minimum, the incident report shall contain the following:

- i. name of the youth;
- ii. date and time the incident occurred;
- iii. a brief description of the incident;
- iv. where the incident occurred;
- v. any youth and/or staff involved in the incident;
- vi. immediate treatment provided if any;
- vii. signature of the staff completing the report; and
- viii. any follow-up required.

e. If the confinement continues through a change of shifts, a relieving staff member shall check the youth and the room prior to assuming his or her post and assure that the conditions set forth in these rules are being met.

f. There shall be a means for the youth to communicate with staff at all times.

g. There shall be no reduction in food or calorie intake.

h. The youth shall have access to bathroom facilities, including a toilet and washbasin.

3. Room Isolation

a. This type of isolation shall be utilized only while the youth is an imminent threat to safety and security.

b. Staff shall hold a youth in isolation only for the time necessary for the youth to regain self-control and no longer pose a threat. The amount of time shall in no case be longer than four hours.

4. Room Confinement

a. Room confinement shall not be imposed for longer than 72 hours.

b. If a youth is placed in room confinement for longer than eight hours, the youth shall be allowed due process. Due process procedures include the following:

i. Written notice to the youth of the alleged rule violation.

ii. A hearing before a disciplinary committee comprised of impartial staff who were not involved in the incident of alleged violation of the rule. The disciplinary committee may gather evidence and investigate the alleged violation. During the hearing, the youth will be allowed to be present provided he/she does not pose a safety threat. The youth may have a staff member of his/her choosing present for assistance. The youth will be allowed to present his/her case and present evidence and/or call witnesses.

iii. Following the hearing, the disciplinary committee shall render decision and find the youth at fault or not.

iv. The youth shall receive a written notice of the committee's decision and the reasons for the decision.

v. The youth may appeal a finding of being at fault to the administrator assigned to the JDF.

5. Administrative Segregation

a. No youth shall be placed on administrative segregation for longer than 24 hours without a formal review of the youth's file by a qualified mental health professional and the facility administrator.

b. While a youth is on administrative segregation, the youth shall be provided with daily opportunities to engage in program activities such as education and large muscle exercise, as his/her behavior permits. The program activities may be individual or with the general population, at the discretion of the administrator or designee.

F. Staff Intervention/Restraints

1. The provider shall have written policies and procedures and practices regarding the progressive response for a youth who poses a danger to themselves, others, or property. Approved physical escort techniques, physical restraints and mechanical restraint devices are the only types of interventions that may be used in the facility. Physical and mechanical restraints shall only be used in instances where the youth's behavior threatens imminent harm to the youth or others, or serious property destruction, and shall only be used as a last resort. Plastic cuffs shall only be used in emergency situations. Use of any percussive or electrical shocking devices or chemical restraints is prohibited.

2. Restraints shall not be used for punishment, discipline, retaliation, harassment, intimidation or as a substitute for room restriction or confinement.

3. When a youth exhibits any behavior that may require staff intervention, the following protocol shall be adhered to when implementing the intervention unless the circumstances do not permit a progressive response:

a. Staff shall begin with verbal calming or de-escalation techniques.

b. Staff shall use an approved physical escort technique when it is necessary to direct the youth's movement from one place to another.

c. Staff shall use the least restrictive physical or mechanical restraint necessary to control the behavior.

d. If physical force is required, the use of force shall be reasonable under the circumstances existing at the moment the force is used and only the amount of force and type of restraint necessary to control the situation shall be used.

e. Staff may proceed to a mechanical restraint only when other interventions are inadequate to deal with the situation.

f. Staff shall stop using the intervention as soon as the youth re-gains self control.

4. During the period of time a restraint is being used:

a. The youth shall be checked by a staff member at least every 15 minutes. Documentation of these checks shall be recorded and maintained in the youth's file. If the use of the restraint exceeds 60 minutes, a health professional must

authorize the continued use of the restraint. However, restraints cannot be used for longer than four hours.

b. There shall be a means for the youth to communicate with staff at all times.

c. Staff shall not withhold food while a youth is in a mechanical restraint.

d. The youth shall have access to bathroom facilities, including a toilet and washbasin.

5. In all situations in which a restraint is used, staff involved shall record an incident report with the shift supervisor by the end of the shift. The report shall outline in detail the presenting circumstances and a copy shall be kept in the youth's file and a central incident report file. At a minimum, the incident report shall contain the following:

a. the name of the youth;
b. the date, time, and location the intervention was used;

c. the type of intervention used;
d. the name of the staff member requesting use of the intervention;

e. the name of the supervisor authorizing use of the intervention;

f. a brief description of the incident and the reason for the use of the intervention;

g. the efforts made to de-escalate the situation and alternatives to the use of intervention that were attempted;

h. any other youth and/or staff involved in the incident;

i. any injury that occurred during the intervention restraint and immediate treatment provided if any;

j. the date and time the youth was released from the intervention;

k. the name and title of the health professional authorizing continued use of a restraint if necessary beyond 60 minutes;

l. signature of the staff completing report; and

m. any follow-up required.

6. The youth shall receive a list of the prohibited practices. There shall be documentation of acknowledgement of receipt of the list of prohibited practices by the youth in the youth's file.

7. Facility staff shall not use physical restraints or mechanical restraints unless they have been trained in the use of such restraints. Training shall include methods of monitoring and assessing a restrained youth for injuries and loss of circulation as a result of the use of mechanical restraint.

8. After any incident of use of a restraint, medical follow-up shall occur as soon as a qualified medical professional is available at the facility, or sooner if medically necessary as determined by the facility administrator.

G. Prohibited Practices When Using Restraints

1. The provider shall have a written list of prohibited practices by staff members when using a restraint. This following are prohibited:

a. restraints that are solely intended to inflict pain;

b. restraints that put a youth face down with sustained or excessive pressure on the back, chest cavity, neck or head;

c. restraints that obstruct the airway or impair the breathing of the youth;

d. restraints that restrict the youth's ability to communicate;

e. restraints that obstruct a view of the youth's face;

f. any technique that does not allow monitoring of the youth's respiration and other signs of physical distress during the restraint;

g. any use of four or five-point restraints, straightjackets, or restraint chairs;

h. mechanical restraint devices that are so tight they interfere with circulation or that are so loose they cause chafing of the skin;

i. use of a waistband restraint on a pregnant youth;

j. use of a mechanical restraint that secures a youth in a position with his/her arms and/or hands behind the youth's back (hog-tied) or front, with arms or hands secured to the youth's legs;

k. use of a mechanical restraint that affixes the youth to any fixed object, such as room furnishings or fixtures; and/or

l. use of any maneuver that involves punching, hitting, poking, pinching, or shoving.

2. A youth in mechanical restraints shall not participate in any physical activity, other than walking for purposes of transportation.

3. A list of these prohibitions shall be posted in the facility.

4. The youth shall receive a list of the prohibitions when using a restraint. There shall be documentation of acknowledgement of receipt of the list of prohibitions in the youth's file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7517. Facility Services

A. Education

1. The provider shall have written policies and procedures, and practices to ensure that each youth has access to the most appropriate educational services consistent with the youth's abilities and needs, taking into account his/her age, and level of functioning.

2. The provider shall provide accommodations for educational services to be provided by the local school district in accordance with local school board calendar.

3. Prior to the end of the first official school day following admission, the youth shall receive a brief educational history screening with respect to their school status, special education status, grade level, grades, and history of suspensions or expulsions. Staff shall use this information to determine initial placement in the facility educational program.

4. The youth shall receive a free and appropriate public education.

5. Within three calendar days of the youth's arrival at the facility, the provider shall request educational records from the youth's previous school.

6. The youth shall attend the facility school at the earliest possible time but within three calendar days of admission to the facility.

7. The youth's admission assessment shall identify if the youth has any disabilities. Youth with disabilities shall be identified to the local school district.

8. The provider shall ensure youth have access to vocational training, GED programs, and other alternative educational programming if available from the local school district.

9. Youth in restricted, disciplinary, or high security units shall receive an education program comparable to youth in other units in the facility consistent with safety needs.

10. When youth are suspended from the facility school, the suspension shall comply with local jurisdiction due process requirements.

11. Behavior intervention plans shall be developed for a youth whose behavior interferes with their school attendance and progress.

12. The provider shall have available reading materials geared to the reading levels, interests, and primary languages of confined youth.

13. The school classes shall be held in classrooms/multi-purpose rooms. The provider shall ensure that the educational space is adequate to meet the instructional requirements of each youth.

14. The provider shall ensure that youth are available for the minimum minutes in a school day required by law.

15. The administrator shall immediately report in writing to the local school district if the facility school is not being staffed adequately to meet state student to teacher ratios for education, including not but not limited to, special education staff and substitute teaching staff. If the issue is not timely resolved by the local school district, then the administrator shall file a written complaint with the State Board of Education and cooperate with any subsequent directives received from the State Board of Education.

B. Daily Living Services

1. Written schedules of daily routines shall be posted and available to the youth.

2. Personal Possessions

a. Space shall be provided for secure storage of each youth's personal property.

b. A separate locked cabinet or drop safe for money and other valuables shall be provided.

3. Clothing and Bedding

a. The provider shall maintain an inventory of clothing, and bedding to ensure consistent availability and replacement of items that are lost, destroyed, or worn out.

b. The provider shall provide clean underclothing, socks, and outerwear that fit properly.

c. The provider shall provide for the thorough cleaning and when necessary, disinfecting of youth's personal clothing.

d. The provider shall issue clean bedding and linen, including two sheets, a pillow, pillowcase, a mattress, and sufficient blankets to provide reasonable comfort.

e. Linen shall be exchanged weekly and towels exchanged daily.

4. Bathing and Personal Hygiene

a. Youth shall be given appropriate instructions on hygiene and shall be required to comply with facility rules of personal cleanliness and oral hygiene.

b. Youth shall be required to bath or shower daily and/or after strenuous exercise.

c. Youth shall have access to adequate personal hygiene and toiletry supplies, such as hairbrushes, toothbrushes including hygiene supplies specific for females, if females are detained in the facility.

d. Items that could allow for spread of germs shall not be shared among youth.

e. Shaving equipment shall be made available upon request under close supervision on an as needed basis.

C. Food Services

1. Food Preparation

a. The provider shall develop and implement a written policy and procedure for providing food services. Accurate records shall be maintained of all meals served. All components of the food service operation in the facility shall be in compliance with all applicable public health requirements.

b. A staff member experienced in food service management shall supervise food service operations.

c. A nutritionist, dietitian, or other qualified professional shall ensure compliance with recommended food allowances and review a system of dietary allowances.

d. A different menu shall be followed for each day of the week and the provider shall keep dated records of menus, including substitutions and changes.

e. The kitchen, consisting of all food storage, food preparation, food distribution, equipment storage, and layout shall comply with Office of Public Health requirements.

2. Nutritional Requirements

a. A youth shall receive no fewer than three nutritionally balanced meals in a 24 hour period.

b. Meals shall be planned and shall provide a well-balanced diet sufficient to meet nutritional needs.

c. Youth shall receive snacks in the evenings.

3. Modified Diets

a. The provider shall provide meals for youth with special dietary requirements, such as youth with allergies or other medical issues, pregnant youth, and youth with dental problems, and youth with religious beliefs that require adherence to religious dietary laws.

4. Daily Schedule

a. Three meals, two of which shall be hot, shall be provided daily, lasting a minimum of 20 minutes each.

b. No more than 14 hours shall elapse between the evening meal and breakfast meal.

c. Variations shall be allowed on weekends and holidays.

d. Regular meals and/or snacks shall not be withheld for any reason.

e. Youth shall not be forced to eat any given food item.

f. Provisions shall be made for the feeding of youth admitted after the kitchen has been closed for the day.

g. Normal table conversation shall be permitted during mealtimes.

h. There shall be a single menu for staff and youth.

5. General Issues

a. The general population shall not be fed meals in sleeping rooms except under circumstances where safety and security of the building and/or staff would otherwise be jeopardized.

D. Health Related Services

1. Health Care

a. The provider shall have written policies and procedures and practices to ensure preventive, routine, and emergency medical, mental health and dental care for youth.

b. The provider shall have a responsible health authority accountable for health care services pursuant to a contract or job description.

c. The provider shall provide health services to youth free of charge.

d. Limit sharing of confidential information to those who need the information to provide for the safety, security, health, treatment, and continuity of care for youth, consistent with state and federal law.

e. Each provider shall provide a dedicated room or rooms for examinations.

2. Medical Care

a. The provider shall have availability or access to a physician or local emergency room 24 hours, seven days a week.

b. Staff assigned to provide medical care shall be qualified to do so as required by law.

c. The youth shall be notified of how and to whom to report complaints about any health related issues or concerns.

d. The provider shall ensure that each youth receive medical care if they are injured or abused.

e. The provider shall immediately attempt to notify the youth's parent/legal guardian of a youth's illness or injury that requires service from a hospital.

f. Youth may request to be seen by a qualified medical professional without disclosing the medical reason and without having non-health care staff evaluate the legitimacy of the request.

g. The provider shall ensure that any medical examination and treatment conforms to state laws on medical treatment of minors, who may give informed consent for such treatment, and the right to refuse treatment.

h. Medical staff shall obtain informed consent from a youth and/or parent/legal guardian as required by law, and shall honor refusals of treatment.

i. When medical and/or mental health staff believe that involuntary treatment is necessary, the treatment shall be conducted in a hospital and not at the facility after compliance with legal requirements.

j. Staff shall document the youth and/or parent/legal guardian's consent or refusal, including counseling with respect to treatment, in the youth's medical file.

k. Pregnant youth shall be provided prenatal care. Any refusal for prenatal care by the pregnant youth shall be documented in their file.

l. Youth who are victims of sexual assault shall receive immediate medical treatment, counseling, and other services.

m. Files of all medical examinations, follow-ups and services, together with copies of all notices to a parent/legal guardian shall be kept in the youth's medical file.

n. Youth placed in medical isolation shall participate in programming as determined by the facility's qualified medical professional.

3. Mental Health Care

a. The provider shall ensure that 24-hour on-call or emergency mental health services are available for youth.

b. Youth shall be appropriately assessed and treated for suicide risk, to include the following principles:

i. All staff working with youth shall receive training on recognition of behavioral and verbal cues indicating vulnerability to suicide, and what to do in case of suicide attempts or suicides to include the use of a cut-down tool for youth hanging.

ii. Staff shall document the monitoring of youth on suicide watch at the time they conduct the monitoring.

iii. Qualified mental health professionals shall determine the level of supervision to be provided.

iv. Qualified mental health professionals shall provide clear, current information about the status of youth on suicide watch to staff supervising youth.

v. Staff shall not substitute supervision aids, such as closed circuit television or placement with roommates, for in-person one-on-one staff monitoring.

vi. Youth at risk of suicide shall be engaged in social interaction and shall not be isolated. Youth on all levels of suicide precautions shall have an opportunity to participate in school and activities to include the one-on-one staff person.

vii. Youth on suicide watch shall not be left naked. Clothing requirements shall be determined by a qualified mental health professional.

viii. Only a qualified mental health professional shall authorize the release of a youth from suicide watch or lower a youth's level of precautions. Qualified mental health professionals shall return youth to normal activity as soon as possible.

ix. A qualified mental health professional shall follow-up with youth during and after the youth is released from suicide watch. The follow-up shall be to the degree and frequency that the qualified mental health professional determines is necessary to meet the youth's mental health needs.

x. Suicides or attempts of suicide shall be accurately documented. There shall be an administrative and mental health review and debriefing after each such occurrence.

xi. Staff shall immediately notify the parent/legal guardian following any incident of suicidal behavior.

xii. Staff shall immediately notify the parent/legal guardian following any incident of self-harm as determined by a qualified mental health professional.

4. Medication

a. The provider shall ensure that medication is administered by a registered nurse, licensed practical nurse, or licensed medical physician; by persons with appropriate credentials, training, or expertise in accordance with R.S. 15:911.; or self-administered according to state law. All

administration, conditions, and restrictions of medication administration shall be in accordance with R.S. 15:911.

b. The administration of all prescription and non-prescription medication shall be documented whether administered by staff or supervised by staff while self-administering. This documentation shall include:

- i. the youth's name;
- ii. date;
- iii. time;
- iv. medication administered;
- v. the name of the person administering the medication; and
- vi. the youth's signature, if self-administered.

c. If a youth refuses to take medication, documentation shall include:

- i. the youth's name;
- ii. date;
- iii. time;
- iv. medication to be administered;
- v. the name of the person attempting to administer the medication;
- vi. the refusal;
- vii. reason for the refusal; and
- viii. the youth's signature, if youth is willing to sign.

d. Receipt of prescription medication shall be by a qualified medical professional or unlicensed trained personnel and the process shall be as follows:

i. When medication arrives at the facility, the qualified medical professional/unlicensed trained personnel shall conduct a count with the name of the person delivering the medication and document the count utilizing a facility form which includes the person delivering medication; the name of youth to whom the medication is prescribed and the amount, physician, and date prescribed for all medication.

ii. All medication shall be in the original container and not expired.

iii. The qualified medical professional shall prepare a medication administration record for all medications.

iv. The qualified medical professional shall place the medication in a locked medication location.

e. The qualified medical professional shall identify and confirm the prescription of all medication received at the facility.

f. There shall be a system in place to ensure that there is a sufficient supply of prescribed medication available for all youth at all times.

i. At shift change, a qualified medical professional or unlicensed trained personnel shall review the medication administration record to ensure that medication was administered as ordered and maintain an inventory of the medication.

ii. Any deviation in the medication count shall be reported to the administrator or designee when identified.

iii. The qualified medical professional or unlicensed trained personnel shall ensure that any medication given to a youth is in accordance with a physician's order.

iv. There shall be a system in place for the documentation of medication errors.

g. Standing orders for non-prescription medication, including directions from the physician indicating when they should be contacted, shall be signed by a physician. There shall be no standing orders for prescription medication. The orders shall be reviewed and signed annually.

h. Medication shall not be used as a disciplinary measure, for the convenience of staff, or as a substitute for programming.

i. The provider shall notify the youth's parent/legal guardian of the potential benefits and side effects of medication prescribed while the youth is in the facility. The youth or the youth's parent/legal guardian must consent to changes to their medication, prior to administration of any new or altered medication.

j. The qualified medical professional or unlicensed trained personnel shall ensure that the on call physician is immediately notified of any side effects observed by the youth, or by staff, as well as, any medication errors. Any negative side effects shall be promptly recorded in the youth record. The parent/legal guardian shall be notified verbally or in writing within 24 hours of any such side effects and a notation of such communication shall be documented in the youths file.

k. Medication shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, and security, as required by manufacturer's guidelines and/or law.

l. Discontinued and outdated medication, as well as, medication with damaged containers, or illegible or missing labels shall be properly disposed of according to state law.

m. The provider shall maintain an adequate supply of emergency medication and easily accessible information to include the phone number of the poison control center in case of overdoses or toxicological emergencies.

5. Dental Care

a. The provider shall have a written policy and procedure and practice for providing dental services to all youth to include the following:

i. Youth shall be allowed to brush their teeth at least twice daily.

ii. The provider shall provide a dental examination by a physician/dentist, as needed.

iii. The provider shall provide emergency dental care, as needed.

iv. The qualified medical professional will contact the youth's parents/legal guardian regarding any dental needs identified.

v. All dental examinations, follow-ups, and services shall be documented in the youth's medical file.

6. Immunizations

a. The provider shall have a written policy and procedure and practice regarding the maintenance of immunization records.

b. Within seven days of admission, each youth's immunization records shall be requested from the school of record or other resources. If not received in the time specified, staff shall follow-up with school or other resources. Any immunization record received shall be included in the youth's medical file.

c. The provider shall provide or make arrangements for needed immunizations, as identified by a qualified medical professional.

E. Exercise/Recreation/Other Programming

1. The provider shall have a policy and procedure for approving a program of exercise, recreation, and other programming for all youth. The program will ensure that girls have reasonable opportunities for similar activities, skill development, and an opportunity to participate in programs of comparable quality.

2. Youth in the facility, including youth on disciplinary or restricted status, shall receive at least one hour of large muscle exercise daily. This exercise shall be outside, weather permitting.

3. Youth in the facility shall receive a minimum of one hour of recreational time per day outside of the youth's sleeping room. Recreational activities shall include a range of activities in dayroom/multipurpose rooms or common areas, including but not limited to reading, listening to the radio, watching television or videos, board games, drawing or painting, listening to or making music, and letter writing.

4. The provider shall provide functioning recreational equipment and supplies for physical education activities.

5. Youth shall be provided unstructured free time. There shall be an adequate supply of games, cards, writing, and art materials for use during unstructured recreation time.

6. Reading materials appropriate for the age, interests, and literacy levels of youth shall be available in sufficient variety and quantity to the youth. Youth shall be allowed to keep reading materials in their rooms including religious reading material.

7. The provider shall offer life and social skill competency development, which helps youth function more responsibly and successfully in everyday life situations. These shall include social skills that specifically address interpersonal relationships, through staff interactions, organized curriculums, or other programming.

8. Staff, volunteers, and community groups shall provide additional programming reflecting the interests and needs of various racial and cultural groups within the facility and are gender-responsive. The facility activities may include art, music, drama, writing, health, fitness, meditation/yoga, substance abuse prevention, mentoring, and voluntary religious or spiritual groups.

9. The provider shall offer gender-responsive programming, to include topics such as physical and mental abuse, high-risk sexual behavior, mental health, parenting classes, and substance abuse issues.

10. The provider shall develop a daily activity schedule, which is posted in each living area and outlines the days and times of each youth activity.

F. Transportation

1. The provider shall have written policies and procedures and practices to ensure that each youth is provided with transportation necessary to meet his/her needs and in a safe and secure manner.

2. The provider shall ensure proper use of official vehicles and guard against use of a vehicle in an escape attempt.

3. Any vehicle used in transporting youth shall be properly licensed and inspected according to state law.

4. The driver shall be properly licensed.

5. The number of passengers shall not exceed vehicle rated capacity.

6. Youth shall not be permitted to drive facility vehicles.

7. Bodily injury and property damage liability shall be maintained for all vehicles.

8. Youth shall not be transported in open truck beds.

9. Seat belts shall be worn at all times.

10. Doors shall remain locked when in transport.

11. Youth shall not be affixed to any part of the vehicle or secured to another youth.

12. Mechanical restraints used during routine transportation in a vehicle or movement of a youth from the facility to another location outside the facility shall not be required to be documented as a restraint.

13. At least one staff member transporting a youth shall be of the same gender as the youth in transport.

14. The driver shall have the ability to communicate to the facility.

15. All vehicles used for the transportation of youth shall be maintained in a safe condition and in conformity with all applicable motor vehicle laws.

16. The provider shall ensure that an appropriately equipped first aid kit is available in all vehicles used to transport youth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7519. Physical Environment

A. Physical Appearance and Conditions

1. The provider shall have written policies and procedures and practices for the maintenance of a clean and sanitary facility that promotes a safe and secure environment for youth and addresses emergency repairs, replacement of equipment and general upkeep, preventive and ongoing maintenance of the physical plant and equipment.

2. Weekly sanitation inspections shall be made of all facility areas. A designated staff member shall submit a written sanitation report to the administrator. A copy of the report shall be kept on file.

3. The provider shall have an effective pest control program to prevent insect and rodent infestation.

4. The facility's perimeters shall be controlled by appropriate means to provide that youth remain within the perimeter and to prevent access by the general public without proper authorization. Facilities shall not utilize razor wire to secure the perimeter.

5. The provider shall provide heating, cooling and ventilation systems that are appropriate to summer and winter comfort zones, with no unhealthy extremes.

6. The provider shall ensure access to clean drinking water.

B. Positive Institutional Atmosphere

1. Staff demonstrates an appropriate level of tolerance of normal adolescent behavior in their day to day working with youth.

2. Furnishings and other decorations reflect a home-like, non-penal environment to the maximum extent possible.

3. Staff recognizes and celebrates important holidays, birthdays, and other dates of significance to youth.

4. The décor and programming acknowledge and value the diverse population of youth in the facility.

C. Dining Areas

1. Dining areas shall be clean, well lit, ventilated and equipped with dining tables and appropriate seating for the dining tables.

D. Sleeping Areas

1. Size requirements for single and double occupancy housing units shall be as follows:

a. A single occupancy room shall have at least 35 square feet of unencumbered space. At least one dimension of the unencumbered space shall be no less than seven feet. In determining unencumbered space in the cell or room, the total square footage is obtained and the square footage of fixtures and equipment is subtracted.

b. A double occupancy room shall have at least 50 square feet of unencumbered space.

2. Ceilings shall be a minimum of 10 feet from ceiling to floor.

3. There shall be separate sleeping rooms for male and female youth.

4. Youth held in sleeping rooms shall have access to a toilet above floor level, a washbasin, clean drinking water, running water, and a bed above floor level.

5. The provider shall not use any room that does not have natural lighting as a sleeping room.

6. The provider shall remove protrusions and other tie-off points from rooms.

7. Doors

a. The doors of every sleeping room shall have a view panel that allows complete visual supervision of all parts of the room. The view panel shall be one-quarter inch tempered or safety glass panels at least 10 inches square.

b. Doors shall be hinged to a metal frame set securely in the wall with sound insulation strips on the jamb.

c. Hinge pins of doors shall be tamperproof and non-removable.

d. In newly constructed or renovated facilities doors to sleeping rooms shall be arranged alternately so that they are not across the corridor from each other.

e. Each youth's housing door shall be hung so that it opens outward, in the opposite direction of the youth living area, or slide horizontally into a recessed pocket in order to prevent the door from being barricaded.

8. Lighting in sleeping rooms shall provide adequate illumination and shall be protected by a tamperproof safety cover.

9. Furniture and Fixtures

a. All furnishings, fixtures, and hardware in sleeping rooms shall be as suicide resistant as possible.

b. All youth shall have a bed above floor level.

c. Only flame-retardant furnishings shall be used in the facility.

10. There shall not be any exposed pipes in sleeping rooms. Traps and shut-off valves shall be behind locked doors outside the sleeping rooms.

E. Bathrooms

1. Individual showers shall be provided for all youth, with a ratio of not less than one shower for each six youth in the population.

2. At least one washbasin shall be provided for each six youth.

3. Urinals may be substituted for up to one-half of the toilets in male units.

4. A minimum of one toilet for each six youth shall be provided in each living unit.

5. Youth in "dry" rooms (without toilets) shall have immediate access to toilets (no longer than a five minute delay after a youth request).

6. Bathroom fixtures shall be sturdy, securely fastened to the floor and/or wall.

7. Showers shall be equipped to prevent slipping.

8. Bathroom facilities shall be designed so that youth are able to shower and perform bodily functions without staff or other youth viewing them naked.

F. Exercise Area

1. Facilities shall have outdoor exercise areas 100 square feet per youth for the maximum number of youth expected to use the space at one time, but not less than 1,500 square feet of unencumbered space.

G. Day Room Area

1. Facilities shall have dayrooms that provide a minimum of 35 square feet of space per youth (exclusive of lavatories, showers, and toilets) for the maximum number of youth per the unit capacity, and no dayroom encompasses less than 100 square feet of space (exclusive of lavatories, showers, and toilets).

H. Interview, Visitation and Counseling Areas

1. The provider shall provide sufficient space for interviewing, counseling, and visiting areas.

2. The interview and visiting room shall allow privacy, yet permit visual supervision by staff, and shall be located within the security perimeter completely separate from the youth living quarters.

I. Laundry

1. The provider shall have a process in place to ensure clean laundry is available for the youth.

J. Storage Areas

1. The provider shall have securely locked storage space for all potentially harmful materials. Keys to such storage spaces shall only be available to authorized staff members.

2. All service and maintenance areas shall be locked and shall be inaccessible to the youth.

3. Separate areas for mechanical equipment shall be provided in a location inaccessible to the youth.

4. Storage space shall be provided for janitorial supplies, food/kitchen supplies and equipment, arts and crafts materials, office supplies, and other supplies required for the maintenance of the facility.

5. Storage areas shall not be accessible by youth.

6. There shall be a location for secure storage of restraining devices and related security equipment. This equipment shall be readily accessible to authorized persons.

K. Housekeeping

1. There shall be a provision for providing housekeeping services for the facility's physical plant.

2. Cleaning and janitorial supplies shall be kept in a locked supply area. Supplies shall be issued and controlled by staff.

3. Unsupervised youth shall not have unrestricted access to areas where cleaning chemicals are stored.

4. Youth shall be directly supervised when cleaning chemicals and equipment are in use.

5. Chores shall be assigned in relation to the youth's age and abilities, and shall be planned so as not to interfere with regular school programs, study periods, recreation, or sleep.

6. The provider shall store and secure objects that can be used as weapons, including but not limited to knives, scissors, tools, and other instruments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7521. Emergency Preparedness

A. The provider shall have a written policy and procedure and practice which ensures the smooth operation, evacuation, if necessary, and steps to be taken during a security threat or disaster, which could impact the operations of the facility or the safety of youth, staff and/or visitors. Quick reference guides shall be located in a designated area for easy access. These procedures shall be reviewed and revised, as necessary. Procedures will incorporate responses to the following events:

1. disturbances and riots;
2. hostages;
3. bomb threats;
4. use of emergency medical services;
5. gas leaks, spills or attacks;
6. power failure;
7. escapes;
8. hurricanes, tornados, severe weather, flooding;
9. fires/smoke;
10. chemical leaks;
11. work stoppage; or
12. national security threat.

B. The emergency preparedness plan shall cover:

1. The identification of key personnel and their specific responsibilities during an emergency or disaster.
2. Agreements with other agencies or departments.
3. Transportation to pre-determined evacuation sites.
4. Notification to families.
5. Needs of youth with disabilities in cases of an emergency.

6. Immediate release of a youth from locked areas in case of an emergency, with clearly delineated responsibilities for unlocking doors.

7. The evacuation of youth to safe or sheltered areas. Evacuation plans shall include procedures for addressing both planned and unplanned evacuations and to alternate locations both in close proximity of the facility as well as long distance evacuations.

8. Ensuring access to medication and other necessary supplies or equipment.

C. Drills

1. The provider shall conduct fire drills once per month, one drill per shift every 90 days, at varying times of the day. Documentation of the fire drill shall include the following:

- a. date of drill;
- b. time of drill;
- c. number of minutes to evacuate facility;
- d. number of youth evacuated;

- e. problems/concerns observed during the drill;
- f. corrections if problems or concerns noted; and
- g. signatures of staff present during drill.

2. The provider shall make every effort to ensure that staff and youth recognize the nature and importance of fire drills.

D. Alternate Power Source

1. An alternate power source policy shall be developed. The facility shall have an alternate source of electrical power that provides for the simultaneous operations of life safety systems including:

- a. emergency lighting;
- b. illuminated emergency exit lights and signs;
- c. emergency audible communication systems and equipment;
- d. fire detection alarms systems;
- e. ventilation and smoke management systems;
- f. refrigeration of medication;
- g. medical devices; and
- h. door locking devices.

2. Testing of Alternate Power Source

a. The alternate power source system shall be tested by automatic self-checks or manual checks to ensure the system is in working condition.

b. Any system malfunctions or maintenance needs that are identified during a test, or at any other time, shall require that a written maintenance request be immediately submitted to the appropriate personnel.

E. Emergency Plan for Unlocking Doors

1. The facility will adhere to Life Safety Code, Article 10-3141 and 10-3142.

2. The provider will ensure that reliable means are provided to permit the prompt release of youth confined in locked sections, spaces or rooms in the event of fire or other emergency.

3. Prompt release from secure areas shall be guaranteed on a 24 hour basis by sufficient personnel with ready access to keys.

F. Declared state of emergency

1. Facilities under a declared state of emergency due to a natural disaster or other operational emergency of facilities housing youth from these affected facilities shall be exempt from capacity requirements as determined by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7523. Safety Program

A. Policies and Procedures

1. The provider shall have policies and procedures and practices that ensure an on-going safety program is maintained.

B. General Safety Practices

1. Firearms and weapons shall be prohibited in secure areas. The provider shall require that visiting law enforcement personnel store their weapons either in provided lock-boxes or locked in their vehicles.

2. Staff shall accompany private contractors when in the presence of youth.

3. The provider shall ensure that a properly equipped first aid kit is available in each living unit.

C. Security

1. Doors and Perimeter Control

a. The provider shall maintain controlled access to the facility and internal doors at all times.

b. The provider shall designate entrances and exits for use by staff and the public. Designated perimeter entrances and doors will be secured to ensure that youth remain on facility grounds and to prevent unauthorized public access to the facility.

c. The provider shall record admissions and departures of visitors entering and exiting the facility to include the nature of business, arrival and departure times, and a brief notation of unusual circumstances surrounding any visit.

d. The provider shall control access to any vehicular entrance, when applicable.

e. The provider shall maintain security of all doors, unoccupied areas and storage rooms and accessibility of authorized persons to secured areas.

2. Youth Supervision and Movement

a. Supervision of movement shall include the following:

i. staff shall be aware of the location and the number of youth he/she is responsible for at all times;

ii. staff shall not leave his/her area of responsibility without first informing the supervisor;

iii. at least one escort must be the same sex and/or gender of youth during movement;

iv. staff shall conduct a periodic head count;

v. instruction shall be provided for staff escorting youth within and outside the facility;

vi. prohibition of the supervision of youth by youth; and

vii. shift assignments, including the use, location, and scope of assignment.

3. Searches

a. The provider shall have a written policy and procedure for conducting searches.

b. The provider shall conduct routine and unannounced searches/inspections of all areas of the physical plant and other areas deemed necessary by administration to ensure the facility remains secure at all times.

c. The provider shall conduct individual room searches when necessary with the least amount of disruption and with respect for youth's personal property.

d. Search of visitors shall be conducted when it is deemed necessary (as permitted by applicable law) to ensure the safety and security of the operation of the facility.

e. Searches of youth, except body cavity searches conducted by a qualified medical professional, shall be conducted by a facility staff member of the same gender as the youth and limited to the following conditions:

i. pat down/frisk search to prevent concealment of contraband and as necessary for facility security; and

ii. oral cavity search to prevent concealment of contraband, to ensure the proper administration of medication, and as necessary for facility security.

f. Youth may be required to surrender their clothing and submit to a strip search under the following guidelines:

i. only if there is reasonable suspicion to believe that youth are concealing contraband or it is necessary for facility security; and

ii. only with supervisory approval.

g. Youth may be required to undergo body cavity search under the following guidelines:

i. only if there is reasonable suspicion to believe that youth are concealing contraband;

ii. only with the approval of the administrator or designee; and

iii. only if conducted by a qualified medical professional, in the presence of one other staff member of the same gender as the youth being searched.

h. The provider shall document justification for a body cavity search and the results of the search placed in the youth's file.

i. All searches, excluding pat down/frisk searches, shall be conducted with youth individually and in a private setting.

j. Staff shall not conduct searches of youth and/or youth's room as harassment or for the purpose of punishment or discipline.

4. Key Control

a. The provider shall ensure safe and secure inventory, accountability, distribution, storage, loss, transfer, and emergency availability of all keys. The provider shall develop and implement written policy addressing loss of keys.

5. Equipment and Tool Control

a. The provider shall ensure safe and secure inventory, accountability, distribution, storage of all tools and equipment. The provider shall develop and implement a written policy addressing loss of equipment and tools.

b. Equipment and tool use by youth shall be under the direct supervision of designated staff and according to state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

§7525. Data

A. Admission Data

1. The provider shall maintain accurate records on all new admissions, to include the following data fields:

a. Demographics of youth admitted, aggregated by:

i. race;

ii. ethnicity;

iii. gender;

iv. date of birth;

v. parish of residence; and

vi. geographical zone determined by provider to include zip code, local law enforcement zones).

b. Legal status of youth, aggregated by:

i. custody status of the youth; and

ii. adjudication status;

(a) pre-adjudicated - status/delinquent; and

(b) post-adjudicated - status/delinquent.

c. Offenses of youth admitted, aggregated by:

i. specific charge(s);

- ii. intake date; and
- iii. release data.
- d. Youth participation in Families in Need of Services (FINS) program:
 - i. dates of participation in FINS (formal or informal); and/or
 - ii. referrals to FINS (formal or informal).

B. Operational Data

- 1. The provider shall maintain accurate records of operational events that include the following data fields:
 - a. Youth released, aggregated by:
 - i. race;
 - ii. ethnicity;
 - iii. gender; and
 - iv. custody status.
 - b. Average daily population of youth in the facility;
 - and
 - c. Average length of stay of youth in the facility.

C. Detention Screening Data

- 1. If a provider conducts a Risk Assessment Instrument (RAI) on new admissions, it shall maintain an accurate record of the following data fields:
 - a. Demographics of youth screened, aggregated by:
 - i. race;
 - ii. ethnicity;
 - iii. gender;
 - iv. date of birth;
 - v. parish of residence; and
 - vi. geographical zone determined by provider to include zip code, local law enforcement zones.
 - b. Offense of youth screened:
 - i. specific charge(s); and
 - ii. release date.
 - c. Screen data:
 - i. date completed;
 - ii. overrides usage; and
 - iii. screening outcomes: release/alternative to detention/secure detention.
 - d. Outcome data:
 - i. successful/unsuccessful; and
 - ii. recidivism/failure to appear (FTA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:

Ruth Johnson
Secretary

1205#049

DECLARATION OF EMERGENCY

**Department of Children and Family Services
Economic Stability and Self-Sufficiency**

TANF Initiatives (LAC 67:III.5501)

The Department of Children and Family Services (DCFS), Economic Stability and Self-Sufficiency, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 15 Temporary

Assistance for Needy Families (TANF) Initiatives, Chapter 55 TANF Initiatives, Section 5501. This amendment is necessary to allow the agency the flexibility to make adjustments to the TANF Initiatives based upon the availability of funding from the TANF Block Grant. This Emergency Rule extension will become effective May 30, 2012 and will remain in effect until the final Rule becomes effective.

The authorization to promulgate emergency rules to facilitate the expenditure of Temporary Assistance to Needy families (TANF) funds is contained in Act 12 of the 2011 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

**Part III. Economic Stability and Self-Sufficiency
Subpart 15. Temporary Assistance for Needy Families
(TANF) Initiatives**

Chapter 55. TANF Initiatives

§5501. Introduction to the TANF Initiatives

A. - C.4. ...

D. To the extent that appropriations are available, the secretary may fund and make available to eligible families the TANF Initiatives.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2537 (November 2010), amended by the Department of Children and Family Services, Economic Stability and Self Sufficiency Section, LR 38:

Ruth Johnson
Secretary

1205#048

DECLARATION OF EMERGENCY

**Department of Environmental Quality
Office of the Secretary**

Offset Requirements
(LAC 33:III.504, 603, and 607)(AQ327E1)

In accordance with R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Environmental Quality to use emergency procedures to establish rules, and R.S. 30:2011 and 2054, which authorize the department to promulgate rules and regulations, the secretary of the department hereby declares that an emergency action is necessary to implement transitional permitting procedures between the effective date of the redesignation of the Baton Rouge area to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the effective date of the area's (or portion thereof) nonattainment designation with respect to the 2008 8-hour ozone NAAQS. This is a renewal of Emergency Rule AQ327, which was effective on December 30, 2011 and published in the *Louisiana Register* on January 20, 2012.

The Baton Rouge area (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) is currently designated as nonattainment with respect to the

1997 8-hour ozone NAAQS of 0.08 parts per million (ppm). Consequently, increases of nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions are governed by Nonattainment New Source Review (NNSR) procedures provided by LAC 33:III.504. Under NNSR, prior to the construction of a new major stationary source or a major modification of an existing major stationary source, an owner or operator must obtain “offsets” for significant increases in emissions of NO_x and VOC in the form of Emission Reduction Credits (ERC) banked in accordance with LAC 33:III.Chapter 6.

On November 30, 2011, EPA redesignated the Baton Rouge area to attainment of the 1997 ozone NAAQS, effective December 30, 2011. Therefore, on December 30, 2011, NNSR provisions, including those requiring offsets for significant NO_x and VOC increases, will no longer be mandated by the Clean Air Act (CAA). However, as discussed below, another ozone standard will soon be implemented, and one or more parishes within the Baton Rouge area will once again be designated as nonattainment. Further, the maintenance plan for the area, required by the CAA to ensure Baton Rouge remains in compliance with the 1997 ozone NAAQS, assumed no net growth in point source NO_x and VOC emissions.

On March 27, 2008, EPA lowered the ozone NAAQS from 0.08 ppm to 0.075 ppm. This standard became effective on May 27, 2008. However, on September 16, 2009, the EPA announced it would reconsider the ozone NAAQS and therefore delayed implementation of the 2008 standard. On January 19, 2010, EPA proposed that the primary standard should be set within the range of 0.060 to 0.070 ppm. However, on September 2, 2011, President Obama “requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards.” Because the ongoing review of the 2008 ozone standard will not be completed for several years, EPA is now moving ahead with certain required actions to implement the 2008 standard.

Based on air quality data from 2008-2010, the department recommended that East Baton Rouge Parish be designated as nonattainment. EPA expects to finalize area designations in spring of 2012. For the short period of time during which East Baton Rouge will be an attainment area, and until the department completes final rulemaking to address NNSR in the Baton Rouge area subsequent to its designation under the 2008 ozone NAAQS, this Emergency Rule will require owners or operators to offset certain increases of NO_x and VOC emissions in order to ensure that Baton Rouge continues to make progress toward attainment of the 2008 ozone NAAQS. Further, in order to mitigate increases of NO_x and VOC emissions in Ascension, Iberville, Livingston, and West Baton Rouge Parishes consistent with the Baton Rouge area’s maintenance plan, this Emergency Rule will also apply to owners or operators in those parishes as well.

This Emergency Rule is effective on April 30, 2012, and shall remain in effect for a maximum of 120 days. The department has begun rulemaking to promulgate this regulation change. For more information concerning AQ327E1, you may contact the Air Permits Division at (225) 219-3147.

Adopted this 26th day of April, 2012.

Title 33
ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review (NNSR) Procedures and Offset Requirements in Specified Parishes

A. Applicability. Except as specified in Subsection M of this Section, the provisions of this Section apply to the construction of any new *major stationary source* or to any *major modification* at a major stationary source, as defined herein, provided such source or modification will be located within a nonattainment area so designated in accordance with Section 107 of the federal Clean Air Act, and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment. If any provision of this Section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Section, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

A.1. - L. Table 1. ...

* * *

M. The provisions of this Subsection shall apply to stationary sources located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge as long as each parish’s designation with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone is either attainment, marginal nonattainment, or moderate nonattainment.

1. New Stationary Sources. The owner or operator of a new stationary source shall provide offsets for potential VOC and NO_x emissions in excess of 50 tons per year.

2. Existing Stationary Sources

a. The owner or operator of an existing stationary source with a potential to emit of 50 tons per year or more of VOC shall provide offsets for each net emissions increase of 25 tons per year or more of VOC.

b. The owner or operator of an existing stationary source with a potential to emit of 50 tons per year or more of NO_x shall provide offsets for each net emissions increase of 25 tons per year or more of NO_x.

c. Consideration of the net emissions increase shall be triggered for any project that would increase emissions of VOC or NO_x by 25 tons per year or more, without regard to any project decreases.

3. Offsets shall be required at a ratio of 1.10 to 1 unless a higher ratio is mandated by Subsection L, Table 1 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the

Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), LR 38:

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§603. Applicability

A. ...

B. Notwithstanding Subsection A of this Section, sources located in Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes may participate in the emissions banking program for purposes of securing offsets where required by LAC 33:III.504.M.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 38:

§607. Determination of Creditable Emission Reductions

A. - C.3. ...

4. Quantify baseline emissions as follows:

a. for stationary sources located in ozone nonattainment areas:

i. - ii. ...

b. for stationary sources located in ozone attainment areas, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section.

C.5. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1601 (September 2006), LR 33:2068 (October 2007), LR 38:

Peggy M. Hatch
Secretary

1205#013

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

Daily Double (LAC 35:I.10501)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective April 10, 2012 and it shall remain in effect for 120 days or until this Rule takes effect through the normal

promulgation process, whichever comes first. This declaration extends the Emergency Rule adopted and implemented on November 14, 2011 and initially extended on March 13, 2012.

The Emergency Rule will allow more than two daily doubles to be permitted during any single race card for the Fair Grounds Thoroughbred meet opening on November 24, 2011, and all other licensed race tracks conducting live racing beginning on November 14, 2001. The Fair Grounds Race Track predicts that by allowing wagers on additional daily doubles, the handle will increase and therefore the revenue to the state of Louisiana will also increase for this meet. If this is not done by emergency procedure, the following rule will not be enacted for the use of the Fair Grounds in 2011.

This Emergency Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Title 35
HORSE RACING**

Part I. General Provisions

Chapter 105. Daily Double

§10501. Daily Doubles

A. Daily doubles shall be permitted during any single race card.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:441 (December 1976), amended LR 3:37 (January 1977), LR 4:282 (August 1978), LR 6:542 (September 1980), LR 12:289 (May 1986), LR 38:

Charles A. Gardiner III
Executive Director

1205#003

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

Mandatory Health Screening (LAC 35:I.1304)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective April 10, 2012 and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first. This declaration extends the Emergency Rule adopted and implemented on November 14, 2011 and initially extended on March 13, 2012.

The equine medical director of the Louisiana State Racing Commission has advised that the concern regarding Equine Piroplasmiasis remains, but has been narrowed to the strain, Theileria equi. The need for a negative test for Babesia caballi is no longer required due to the extremely low incidence of Babesia caballi. This will significantly reduce the cost of the testing for the owners of the racehorses requiring testing for Equine Piroplasmiasis.

This Emergency Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Title 35
HORSE RACING**

Part I. General Provisions

Chapter 13. Health Rules

§1304. Mandatory Health Screening

A. ...

B. No horse shall be allowed to enter the confines of a racetrack of any association holding a license to conduct a race meeting or race in Louisiana unless it has had an Equine Piroplasmosis (EP) test taken within 12 months of the date of entry upon the racetrack and/or race, with a negative result for Theileria equi. Record of the negative test shall be attached to registration papers of the horse upon entry to the racetrack. The trainer of the horse is responsible for insuring that a negative Piroplasmosis test result is in the racing secretary's office as required by this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by Department of Commerce, Racing Commission, LR 14:226 (April 1988), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 37:1393 (May 2011), LR 38:

Charles A. Gardiner III
Executive Director

1205#002

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

Pick Five (LAC 35:I.11001)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective April 10, 2012 and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first. This declaration extends the Emergency Rule adopted and implemented on November 14, 2011 and initially extended on March 13, 2012.

This Emergency Rule allows for an exotic wager which has a carryover of 50 percent of the betting pool when there is not a single ticket winner to the next day's wagering pool for The Fair Grounds Thoroughbred meet opening on November 24, 2011, and all other licensed race tracks conducting live racing beginning on November 14, 2011. The Fair Grounds Race Track predicts that the pick five wager will increase the handle, and therefore the revenue to the state of Louisiana. The approximate amount of increase in handle is predicted by the Fair Grounds to be \$23,000 for the entire meet. If this is not done by emergency procedure, the following Rule will not be enacted for the use of the Fair Grounds in 2011.

This Emergency Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

**Title 35
HORSE RACING**

Part I. General Provisions

Chapter 110. Pick Five

§11001. Pick Five

A. The pick five pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place and show pool shown on the totalizator, nor to the rules governing the distribution of such other pools.

B. A pick five pari-mutuel ticket shall be evidence of a binding contract between the holder of the ticket and the association and the said ticket shall constitute an acceptance of the pick five provisions and rules.

C. A pick five may be given a distinctive name by the association conducting the meeting, subject to approval of the commission.

D. The pick five pari-mutuel pool consists of amounts contributed for a selection for win only in each of five races designated by the association with the approval of the commission. Each person purchasing a pick five ticket shall designate the winning horse in each of the five races comprising the pick five.

E. Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the pick five shall race as a single wagering interest for the purpose of the pick five pari-mutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the pick five calculation and the selection shall not be deemed a scratch.

F. The pick five pari-mutuel pool shall be calculated as follows.

1. The net amount in the pari-mutuel pool referred to in this Section is defined as the pari-mutuel pool created by pick five wagering on that particular day and does not include any amounts carried over from previous days' betting as provided by in Subparagraph F.3.a and Subparagraph F.4.a below.

2. One hundred percent of the net amount in the pari-mutuel pool is subject to distribution to a single unique winning ticket holder, plus any carryover resulting from provisions of Paragraph F.3 and Paragraph F.4 shall be distributed to the unique winning ticket holder of the single pari-mutuel ticket which correctly designates the official winner in each of the five races comprising the pick five.

3. In the event there is more than one pari-mutuel ticket properly issued which correctly designates the official winner in each of the five races comprising the pick five, the net pari-mutuel pool shall be distributed as follows.

a. Fifty percent of the net amount in the pari-mutuel pool shall be retained by the association as distributable amounts and shall be carried over to the next succeeding racing day as an additional net amount to be distributed as provided in Paragraph F.2.

b. Fifty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the five races comprising the pick five.

4. In the event there is no pari-mutuel ticket properly issued which correctly designates the official winner in each of the five races comprising the pick five, the net pari-mutuel pool shall be distributed as follows.

a. Fifty percent of the net amount in the pari-mutuel pool shall be retained by the association as distributable amounts and shall be carried over to the next succeeding racing day as an additional net amount to be distributed as provided in Paragraph F.2.

b. Fifty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the most official winners, but less than five, in each of the five races comprising the pick five.

5. Should no distribution be made pursuant to Paragraph F.1 on the last day of the association meeting, then that portion of the distributable pool and all monies accumulated therein shall be distributed to the holders of tickets correctly designating the most winning selections of the five races comprising the pick five for that day or night; the provisions of Subsections I and J have no application on said last day.

G. In the event a pick five ticket designates a selection in any one or more of the races comprising the pick and that selection is scratched, excused or determined by the stewards to be a nonstarter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs. In the event the amount wagered in the win pool on two or more favorites is identical, the favorite with the lowest number on the program will be designated as the actual favorite.

H. In the event of a dead heat for win between two or more horses in any pick five race, all such horses in the dead heat for win shall be considered as winning horses in that race for the purpose of calculating the pool.

I. No pick five shall be refunded except when all of the races comprising the pick five are canceled or declared as "no contest." The refund shall apply only to the pick five pool established on that racing card. Any net pool carryover accrued from a previous pick five feature shall be further carried over to the next scheduled pick five feature operated by the association.

J. In the event that any number of races less than five comprising the pick five are completed, 100 percent of the net pool for the pick five shall be distributed among holders of pari-mutuel tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the pick five pool in which less than five races have been completed. Any net pool carryover accrued from a previous pick five feature shall be further carried over to the next scheduled pick five pool operated by the association.

K. No pari-mutuel ticket for the pick five pool shall be sold, exchanged or canceled after the time of the closing of wagering in the first of the five races comprising the pick five, except for such refunds on pick five tickets as required

by this regulation, and no person shall disclose the number of tickets sold in the pick five pool or the number or amount of tickets selecting winners of pick five races until such time as the stewards have determined the last race comprising the pick five each day to be official.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Racing Commission, LR 38:

Charles A. Gardiner III
Executive Director

1205#005

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Racing Commission**

Super Six (LAC 35:I.10901)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective April 10, 2012 and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first. This declaration extends the Emergency Rule adopted and implemented on November 14, 2011 and initially extended on March 13, 2012.

This Emergency Rule serves to correct the language of the rule to properly state that 70 percent of the net amount in the pari-mutuel pool shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the super six. The rule currently incorrectly provides that 30 percent of the net amount shall be distributed.

This Emergency Rule has no known impact on family formation, stability, and/or autonomy as described in R.S. 49:972.

Title 35 HORSE RACING

Part I. General Provisions

Chapter 109. Super Six

§10901. Super Six

A. The super six pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place and show pool shown on the totalizator, nor to the rules governing the distribution of such other pools.

B. A super six pari-mutuel ticket shall be evidence of a binding contract between the holder of the ticket and the association and the said ticket shall constitute an acceptance of the super six provisions and rules.

C. A super six may be given a distinctive name by the association conducting the meeting, subject to approval of the commission.

D. The super six pari-mutuel pool consists of amounts contributed for a selection for win only in each of six races designated by the association with the approval of the commission. Each person purchasing a super six ticket shall

designate the winning horse in each of the six races comprising the super six.

E. Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the super six shall race as a single wagering interest for the purpose of the super six pari-mutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the super six calculation and the selection shall not be deemed a scratch.

F. The super six pari-mutuel pool shall be calculated as follows.

1. The net amount in the pari-mutuel pool referred to in this Section is defined as the pari-mutuel pool created by super six wagering on that particular day and does not include any amounts carried over from previous days' betting as provided by in Subparagraph F.4.a below.

2. Seventy percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders, plus any carryover resulting from provisions of Paragraph F.4, shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the super six.

3. Thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the second most official winners, but less than six, in each of the six races comprising the super six.

4. In the event there is no pari-mutuel ticket properly issued which correctly designates the official winner in each of the six races comprising the super six, the net pari-mutuel pool shall be distributed as follows.

a. Seventy percent of the net amount in the pari-mutuel pool shall be retained by the association as distributable amounts and shall be carried over to the next succeeding racing day as an additional net amount to be distributed as provided in Paragraph F.2.

b. Thirty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the most official winners, but less than six, in each of the six races comprising the super six.

5. Should no distribution be made pursuant to Paragraph F.1 on the last day of the association meeting, then that portion of the distributable pool and all monies accumulated therein shall be distributed to the holders of tickets correctly designating the most winning selections of the six races comprising the super six for that day or night; the provisions of Subsections I and J have no application on said last day.

G. In the event a super six ticket designates a selection in any one or more of the races comprising the super six and that selection is scratched, excused or determined by the stewards to be a nonstarter in the race, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs. In the event the amount wagered in

the win pool on two or more favorites is identical, the favorite with the lowest number on the program will be designated as the actual favorite.

H. In the event of a dead heat for win between two or more horses in any super six race, all such horses in the dead heat for win shall be considered as winning horses in that race for the purpose of calculating the pool.

I. No super six shall be refunded except when all of the races comprising the super six are canceled or declared as "no contest." The refund shall apply only to the super six pool established on that racing card. Any net pool carryover accrued from a previous super six feature shall be further carried over to the next scheduled super six feature operated by the association.

J. In the event that any number of races less than six comprising the super six are completed, 100 percent of the net pool for the super six shall be distributed among holders of pari-mutuel tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the super six pool in which less than six races have been completed. Any net pool carryover accrued from a previous super six feature shall be further carried over to the next scheduled super six pool operated by the association.

K. No pari-mutuel ticket for the super six pool shall be sold, exchanged or canceled after the time of the closing of wagering in the first of the six races comprising the super six, except for such refunds on super six tickets as required by this regulation, and no person shall disclose the number of tickets sold in the super six pool or the number or amount of tickets selecting winners of super six races until such time as the stewards have determined the last race comprising the super six each day to be official.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:542 (September 1980), amended LR 12:11 (January 1986), amended by the Department of Economic Development, Racing Commission, LR 15:8 (January 1989), LR 38:

Charles A. Gardiner III
Executive Director

1205#004

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Pharmacy

Durable Medical Equipment (DME) Permit (LAC 46:LIII.2401)

The Louisiana Board of Pharmacy is exercising the emergency provisions of the Administrative Procedure Act, specifically at R.S. 49:953.B, to promulgate a new Rule relative to the creation of a new type of pharmacy permit specifically for providers of durable medical equipment (DME) that do not provide prescription drugs. The Emergency Rule is necessary to allow the Board of Pharmacy to issue DME permits to qualifying providers as quickly as possible.

The board has had a long-standing requirement for a pharmacy permit for any entity that wished to provide prescription drugs or devices to Louisiana citizens. The rules

for the pharmacy permit contain minimum specifications for the physical plant that reflect concern for any place that stores controlled dangerous substances and other prescription drugs. Moreover, those minimum specifications require the presence of a pharmacist in the prescription department whenever the pharmacy is open for business. There are a growing number of entities that supply prescription devices or equipment but no prescription drugs. The board has determined that public safety does not require the same level of minimum specifications in business settings that do not contain prescription drugs. The board seeks to establish a separate set of rules for DME providers that do not stock or supply prescription drugs to facilitate the creation and issuance of a DME permit in lieu of the presently-required pharmacy permit.

The federal Centers for Medicare and Medicaid Services (CMS) has recently changed their eligibility criteria for DME providers intending to submit claims for services to Medicare to require evidence of compliance with state credentialing requirements.

A delay in promulgating this proposed Rule will result in some DME suppliers that do not stock prescription drugs being disqualified from participation in Medicare, which has the potential of adversely affecting their financial position. Since these suppliers provide vital services to Medicare beneficiaries across the state, the board has determined that this emergency rule is necessary to prevent imminent peril to the public health, safety, and welfare. This Declaration of Emergency is effective May 2, 2012, and shall remain in effect for the maximum time period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever shall first occur.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 24. Limited Service Providers

Subchapter A. Durable Medical Equipment

§2401. Definitions

A. As used in this chapter, the following terms shall have the meaning ascribed to them in this Section:

Durable Medical Equipment (DME)—technologically sophisticated medical devices that may be used in a residence, including the following:

- a. oxygen and oxygen delivery system;
- b. ventilators;
- c. respiratory disease management devices;
- b. continuous positive airway pressure (CPAP) devices;
- e. electronic and computerized wheelchairs and seating systems;
- f. apnea monitors;
- g. transcutaneous electrical nerve stimulator (TENS) units;
- h. low air loss cutaneous pressure management devices;
- i. sequential compression devices;g. feeding pumps;
- g. home phototherapy devices;
- h. infusion delivery devices;
- i. distribution of medical gases to end users for human consumption;

- j. hospital beds;
- k. nebulizers; and
- l. other similar equipment as determined by rule.

Legend Device—an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, “Caution: federal or state law requires dispensing by or on the order of a physician” and/or “Rx Only”, or any other designation required under federal law.

Medical Gas—those gases and liquid oxygen intended for human consumption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§2403. Durable Medical Equipment (DME) Permit

A. No person or other entity shall sell, rent or provide, or offer to sell, rent or provide, directly or indirectly, to consumers in this state any durable medical equipment, legend devices, and/or medical gas until such person has obtained a Durable Medical Equipment (DME) permit from the board.

B. A DME permit shall authorize the permit holder to procure, possess and provide legend devices to the patient or end user; however, the DME permit shall not authorize the permit holder to procure, possess, or provide any prescription medications.

C. The board shall not issue a DME permit to any person or other entity that has not registered with the Louisiana Secretary of State to conduct business within the state.

D. Licensing Procedures

1. A person or other entity desiring to obtain a DME permit shall complete the application form supplied by the board and submit it with any required attachments and the application fee to the board.

2. The applicant shall provide a complete street address reflecting the location where the applicant will hold the equipment and engage in the activity for which the permit is acquired. The board shall not issue more than one permit for the same physical space.

3. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fee.

4. A person or other entity who knowingly or intentionally submits a false or fraudulent application shall be deemed to have violated R.S. 37:1241(A)(2).

5. Once issued, the DME permit shall expire on August 31 of every year. No person or other entity shall engage in the provision of DME with an expired DME permit.

E. Maintenance of Permit

1. A DME permit shall be valid only for the person or other entity to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a DME permit be valid for any premises other than the physical location for which it is issued.

2. The DME permit holder shall inform the board in writing of any and all changes to its business location within 10 calendar days, with such notice to include both the previous and new addresses.

3. A duplicate or replacement permit shall be issued upon the written request of the permit holder and payment of the required fee. A duplicate or replacement permit shall not serve or be used as an additional or second permit.

4. A DME provider changing ownership shall notify the board in writing 15 calendar days prior to the transfer of ownership.

a. A change of ownership shall be evident under the following circumstances:

- i. sale;
- ii. death of a sole proprietor;
- iii. the addition or deletion of one or more partners in a partnership;
- iv. bankruptcy sale; or
- v. a 50 percent, or more, change in ownership of a corporation, limited liability company, or association since the issuance of the original DME permit.

b. The new owner shall submit a properly completed application form with all required attachments and appropriate fee to the board.

F. Renewal and Reinstatement of Permit

1. The renewal of an active DME permit shall require the submission of a completed application form supplied by the board supplemented with any required attachments and appropriate fee, prior to the expiration date of the permit.

2. The reinstatement of an expired DME permit shall require the submission of a completed application form supplied by the board supplemented with any required attachments as well as the renewal and reinstatement fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§2405. Standards of Practice

A. The DME provider shall not furnish any legend device or medical gas to a patient without a prescription or medical order from a licensed practitioner with prescriptive authority.

B. General Requirements

1. The provider shall establish a suitable facility to house the equipment, allow for equipment maintenance work space, and contain sufficient space for the storage and retrieval of all required records.

2. The provider shall maintain the facility in a clean, orderly and sanitary condition at all times.

3. The facility shall be equipped with a functioning lavatory with hot and cold running water, or in the alternative, hand washing appliances or waterless hand cleaner are available.

4. The facility shall comply with all local and state building laws and fire codes.

5. The provider shall comply with all requirements from the United States Pharmacopeia (USP), the federal Food and Drug Administration (FDA), federal Department of Transportation (DOT) and Occupational Safety and Health Administration (OSHA) relative to the storage, packaging, labeling and shipping of DME including medical gases.

6. The provider shall staff the facility with an adequate number of qualified personnel to properly render DME services in the manner prescribed by law.

7. The provider shall make services continuously available without interruption when such services are essential to the maintenance of life or when the lack of services might reasonably cause harm.

8. The provider shall implement and maintain written procedures for handling complaints, and further, shall maintain a complaint file documenting all complaints and their resolution.

C. Requirements for Providers of Medical Gas, Oxygen and Respiratory Equipment

1. The provider shall comply with the following:

a. when transporting medical gas or oxygen in cylinder or liquid form, comply with all current dot rules;

b. when trans-filling medical oxygen systems, comply with FDA and all state agency requirements regarding trans-filling and repackaging;

c. demonstrate that medical gas and oxygen provided in cylinder or liquid form meet minimum purity standards for medical grade gas or medical grade oxygen; and

d. adhere to the following safety inspection requirements:

i. demonstrate that each piece of oxygen or respiratory equipment has been checked, is free of defects, and operates within the manufacturer's specifications;

ii. refrain from modifying equipment to the extent that the modification might reasonably cause harm;

iii. maintain all electrical components so they do not present fire or shock hazard; and

iv. ensure that all appropriate warning labels or labeling, including tags, are present on the equipment provided.

2. The provider shall comply with the following recall procedures:

a. ensure that lot numbers and expiration dates are affixed to each cylinder delivered;

b. maintain a tracking system for all medical gas and oxygen delivered;

c. document all equipment serial numbers and model numbers to ensure that equipment can be retrieved in the event a recall is initiated; and

d. maintain records for equipment that requires FDA tracking.

3. The provider shall comply with the following maintenance and cleaning requirements:

a. maintain documentation demonstrating that a function and safety check of equipment was performed prior to set-up;

b. maintain an established protocol for cleaning and disinfecting equipment which addresses both aerobic and anaerobic pathogens;

c. maintain a material safety data sheet (MSDS) on file for solutions and products used in cleaning and disinfecting procedures;

d. maintain segregated areas on the premises and in delivery vehicles for clean, dirty and contaminated equipment.

e. clean and disinfect equipment according to manufacturers' specifications;

f. instruct the patient or caregiver on proper cleaning techniques as specified by the manufacturer; and

g. ensure that all medical gas, oxygen and respiratory equipment is properly identified by a tag or label as to its current status of use, i.e., out-of-order or ready for use.

4. The provider shall implement a comprehensive preventive maintenance program which shall include the following:

- a. procedures for problem reporting, tracking, recall, and resolution;
- b. performance of service as specified by the manufacturer and the documentation of such performance in the service records; and
- c. routine inspection, service, and maintenance of equipment located in the patient's home according to the manufacturer's specifications.

5. The provider shall maintain repair logs to document repair and maintenance of equipment, and such logs shall contain the following information:

- a. type of equipment;
- b. manufacturer;
- c. model;
- d. serial number;
- e. date of repair;
- f. specific repair made; and
- g. name of person or company performing the repair.

6. The provider shall maintain testing equipment to ensure accurate calibration. Testing equipment shall be appropriate for the level of service offered. Scales used to weigh liquid oxygen reservoirs shall be properly maintained to ensure accuracy.

7. The provider shall utilize client orientation checklists to review the following information with the patient or care giver:

- a. instructions for use of the equipment;
- b. safety precautions;
- c. cleaning procedures;
- d. maintenance procedures;
- e. return demonstrations on back-up oxygen systems delivered;
- f. instruction for emergency and routine contact procedures; and
- g. delivery and review of written instruction materials to ensure the patient receives adequate information to properly operate the equipment.

8. A written plan of service shall be developed, implemented, and documented in the patient record. The plan of service shall include, but is not limited to, an assessment of the safety of the home environment, the ability of the patient or care giver to comply with the prescription or medical order, and the ability of the patient or care giver to operate and clean the equipment as instructed.

D. Requirements for Providers of Other Durable Medical Equipment

1. Providers who sell, rent or furnish other DME or legend devices shall comply with the following:

- a. provide proper training to personnel for the safe delivery and use of any DME or legend device; and
- b. ensure that all manufacturer's recommended assembly and maintenance procedures are followed; and
- c. adhere to the following safety inspection measures:

i. demonstrate that each piece of DME or legend device has been checked, is free of defect and operates within the manufacturer's specifications;

ii. refrain from modifying equipment to the extent that the modification might reasonably cause harm;

iii. maintain all electrical components so they do not present fire or shock hazard; and

iv. ensure that all appropriate warning labels or labeling, including tags, are present on the equipment provided.

2. The provider shall comply with the following maintenance and cleaning requirements:

a. maintain documentation demonstrating that a function and safety check of equipment was performed prior to set-up;

b. maintain an established protocol for cleaning and disinfecting equipment which addresses both aerobic and anaerobic pathogens;

c. maintain a material safety data sheet (MSDS) on file for solutions and products used in cleaning and disinfecting procedures;

d. maintain segregated areas on the premises and in delivery vehicles for clean, dirty and contaminated equipment.

e. clean and disinfect equipment according to manufacturers' specifications; and

f. instruct the patient or caregiver on proper cleaning techniques as specified by the manufacturer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

§2407. Exemptions

A. The credentialing requirements of this Subchapter shall not apply to the following persons or entities unless such persons or entities have separate business entities engaged in the business of providing DME to patients at their home:

1. chiropractors;
2. dentists;
3. occupational therapists;
4. optometrists;
5. physical therapists;
6. physicians;
7. podiatrists;
8. respiratory therapists;
9. speech pathologists;
10. veterinarians;
11. distributors;
12. home health agencies;
13. hospice programs;
14. hospitals;
15. long term care facilities;
16. manufacturers; and
17. pharmacies.

B. Pharmacies, long term care facilities and hospitals, although excluded from the credentialing requirements of this Subchapter, shall be subject to and comply with the standards of practice identified herein.

C. Nothing in this Subchapter shall be construed to prohibit the pre-hospital emergency administration of

oxygen by licensed health care providers, emergency medical technicians, first responders, fire fighters, law enforcement officers and other emergency personnel trained in the proper use of emergency oxygen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

Malcolm Broussard
Executive Director

1205#024

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Ambulatory Surgical Centers
Reimbursement Methodology
Never Events (LAC 50:XI.7501)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.7501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 2702 of the Patient Protection and Affordable Care Act (ACA) of 2010 directed the Secretary of the U.S. Department of Health and Human Services (DHHS) to establish Medicaid regulations which prohibit federal payments to states for any amounts expended for providing medical assistance for healthcare-acquired conditions and never events. In June 2011, the DHHS, Centers for Medicare and Medicaid Services (CMS) implemented the requirements of §2702.

In compliance with §2702 of ACA, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the provisions governing the reimbursement methodology for ambulatory surgical centers to prohibit Medicaid reimbursement for erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental to the health and safety of the patient. This includes procedures and events that should never happen in a medical setting, commonly known as “never events”. This action is being taken to promote the health and welfare of Medicaid recipients who rely on the surgical procedures provided by ambulatory surgical centers. It is anticipated that implementation of this Emergency Rule will result in programmatic savings to the state; however, the amount of savings is indeterminable for state fiscal year 2012-2013.

Effective July 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for ambulatory surgical centers to prohibit Medicaid reimbursement for the performance of erroneous medical procedures and never events.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 11. Ambulatory Surgical Centers

Chapter 75. Reimbursement

§7501. General Provisions

A. - B. ...

C. Never Events. Effective for dates of service on or after July 1, 2012, the Medicaid Program will not provide reimbursement to ambulatory surgical centers for “never events” or medical procedures performed in error which are preventable and have a serious, adverse impact to the health of the Medicaid recipient. Reimbursement will not be provided when the following “never events” occur:

1. the wrong surgical procedure is performed on a patient;
2. surgical or invasive procedures are performed on the wrong body part; or
3. surgical or invasive procedures are performed on the wrong patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1888 (September 2009), amended LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#067

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

CommunityCARE Program
Program Termination
(LAC 50:I.Chapter 29)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals LAC 50:I.Chapter 29 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the CommunityCARE Program to establish the program as an optional statewide covered service under the Medicaid State Plan instead of a waiver service, and to provide for the exclusion of certain additional Medicaid recipients from mandatory participation in the program (*Louisiana Register*, Volume 32, Number 3).

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions that enhanced the CommunityCARE Program in order to create a more cost effective health care delivery system which provides a continuum of evidence-based, quality-driven health care services. This more cost effective health care delivery system, called the BAYOU HEALTH program, will be implemented in parishes included in specific Geographic Service Areas of the state. Upon the implementation of the BAYOU HEALTH Program, the CommunityCARE Program will be terminated. Therefore, the department now proposes to repeal the provisions governing the CommunityCARE Program due to the implementation of the BAYOU HEALTH program. This action is being taken to promote the health and welfare of Medicaid recipients and to ensure that Medicaid covered services are rendered in a more cost-effective manner. It is anticipated that implementation of this Emergency Rule will have no fiscal impact to the Medicaid Program in state fiscal year 2011-2012.

Effective June 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the provisions governing the CommunityCARE Program and hereby terminates the program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Medicaid Coordinated Care

Chapter 29. CommunityCARE

§2901. Introduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003), amended LR 32:404 (March 2006), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§2903. Recipient Participation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003), amended LR 32:404 (March 2006), amended LR 32:1901 (October 2006), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§2905. Provider Selection

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 17:788 (August 1991), amended LR 19:645 (May 1993), LR 27:547 (April 2001), promulgated for LAC-LR

29:909 (June 2003), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§2907. Provider Qualifications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003), amended LR 32:32:405 (March 2006), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§2909. Emergency Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 17:788 (August 1991), amended LR 19:645 (May 1993), LR 25:669 (April 1999), promulgated for LAC-LR 29:909 (June 2003), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§2911. PCP Referral/Authorization

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003), amended LR 32:405 (March 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:338 (January 2011), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§2913. Physician Management

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 17:788 (August 1991), amended LR 19:645 (May 1993), LR 23:201. (February 1997) promulgated for LAC inclusion, LR 29:910 (June 2003), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§2915. Immunization Pay-for-Performance

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1139 (June 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2279 (October 2010), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#068

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments
(LAC 50.V.2501, 2701, 2705, and 2707)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2501, 2701, 2705, and 2707 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing disproportionate share hospital (DSH) payments to revise the provisions governing non-rural community hospitals and federally mandated statutory hospitals to clarify that hospitals qualifying as a non-rural community hospital in state fiscal year 2007-08 may also qualify in the federally mandated statutory hospital category, and to revise the definition of a non-rural community hospital (*Louisiana Register*; Volume 34, Number 11). In compliance with Act 228 of the 2009 Regular Session of the Louisiana Legislature, the department promulgated an Emergency Rule which amended the provisions governing disproportionate share hospital payments to reallocate any remaining funds from the fiscal year 2009 DSH appropriation to non-rural community hospitals and issue a supplemental payment to these hospitals for their uncompensated care costs (*Louisiana Register*; Volume 35, Number 7).

Act 10 of the 2009 Regular Session of the Louisiana Legislature directed the department to amend the DSH qualifying criteria and payment methodologies for non-rural community hospitals. In compliance with Act 10, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the June 26, 2009 Emergency Rule governing supplemental DSH payments to non-rural community hospitals (*Louisiana Register*, Volume 36, Number 1). The department promulgated an Emergency Rule which amended the January 20, 2010 Emergency Rule to amend the provisions governing supplemental DSH payments to non-rural community hospitals in order to redistribute the funds allocated for the state fiscal year 2010 DSH appropriation (*Louisiana Register*, Volume 36, Number 7).

The department promulgated an Emergency Rule which amended the June 29, 2010 Emergency Rule to revise the provisions governing DSH payments to allow for additional payments after completion of the Centers for Medicare and

Medicaid Services' mandated independent audit for the state fiscal year (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2011 Emergency Rule. This action is being taken to promote the public health and welfare of uninsured individuals and to ensure their continued access to health care by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective June 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing DSH payments.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 25. Disproportionate Share Hospital Payment Methodologies

§2501. General Provisions

A. - B.3. ...

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the Department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. After completion of a Center for Medicare and Medicaid Services' (CMS) mandated independent audit for the state fiscal year, additional payments may occur subject to the conditions specified in §2701.B.1, §2705.D.2, and §2707.B. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

B.5. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:654 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:65 (January 2010), amended LR 36:512 (March 2010), LR 38:

Chapter 27. Qualifying Hospitals

§2701. Non-Rural Community Hospitals

A. ...

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1 of each fiscal year. The department will

claim the federal share for these certified public expenditures. The department's subsequent reimbursement to the hospital shall be in accordance with the qualifying criteria and payment methodology for non-rural community hospitals included in Act 11 of the 2010 Regular Session of the Louisiana Legislature, and may be more or less than the federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1 may not receive Title XIX claim payments or any disproportionate share payments until the department receives the required certifications. Adjustments to the certification amounts shall be made in accordance with the final uncompensated care costs as calculated per the CMS mandated audit for the state fiscal year.

C. Private, non-rural community hospitals (other than freestanding psychiatric hospitals) shall be reimbursed as follows.

1. If the hospital's qualifying uninsured cost is less than 4 percent of total hospital cost, no payment shall be made.

2. If the hospital's qualifying uninsured cost is equal to or greater than 4 percent of total hospital cost, but less than 7 percent, the payment shall be 50 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 4 percent of total hospital cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 7 percent of total hospital cost, but less than or equal to 10 percent, the payment shall be 80 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 4 percent of total hospital cost.

4. If the hospital's qualifying uninsured cost is greater than 10 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 10 percent of total hospital cost and 80 percent of an amount equal to 5 percent of total hospital cost.

5. Qualifying uninsured cost as used for this distribution shall mean the hospital's total charges for care provided to uninsured patients multiplied by the hospital's cost-to-charge ratio as required by the CMS DHS audit rule for the applicable cost report period.

D. The department shall determine each qualifying hospital's uninsured percentage on a hospital-wide basis utilizing charges for dates of service from July 1, 2009 through June 30, 2010.

1. - 5. Repealed.

E. Hospitals shall submit supporting patient specific data in a format specified by the department, reports on their efforts to collect reimbursement for medical services from patients to reduce gross uninsured costs and their most current year-end financial statements. Those hospitals that fail to provide such statements shall receive no payments and any payment previously made shall be refunded to the department. Submitted hospital charge data must agree with the hospital's monthly revenue and usage reports which reconcile to the monthly and annual financial statements. The submitted data shall be subject to verification by the department before DSH payments are made.

F. In the event that the total payments calculated for all recipient hospitals are anticipated to exceed the total amount appropriated, the department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose. Any funding not distributed per the methodology outlined in C.1-C.5 above shall be reallocated to these qualifying hospitals based on their reported uninsured costs. The \$10,000,000 appropriation for the non-rural community hospital pool shall be effective only for state fiscal year 2011 and distributions from the pool shall be considered nonrecurring.

G. Of the total appropriation for the non-rural community hospital pool, \$1,000,000 shall be allocated to public and private non-rural community hospitals with a distinct part psychiatric unit and \$1,000,000 shall be allocated to freestanding psychiatric hospitals.

1. To qualify for this payment hospitals must have uninsured cost as defined in §2701.C.5 equal to or greater than 4 percent of total hospital cost and:

a. be a public or private non-rural community hospital, as defined in §2701.A that has a Medicaid enrolled distinct part psychiatric unit; or

b. enrolled in Medicaid as a freestanding psychiatric hospital that pursuant to 42 CFR 441.151 is accredited by the Joint Commission on the Accreditation of Healthcare Organizations.

2. Payment shall be calculated by:

a. dividing each qualifying hospital's distinct part psychiatric unit's uninsured days by the sum of all qualifying psychiatric unit's uninsured days and multiplying by \$1,000,000;

b. dividing each qualifying freestanding psychiatric hospital's uninsured days by the sum of all qualifying freestanding psychiatric hospital's uninsured days and multiplying by \$1,000,000.

H. The DSH payment shall be made as an annual lump sum payment.

I. Hospitals qualifying as non-rural community hospitals in state fiscal year 2007-2008 and subsequent years may also qualify in the federally mandated statutory hospital category.

J. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended LR 34:2402 (November 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§2705. Small Rural Hospitals

A. - D.1.b. ...

2. Additional payments shall only be made after finalization of the CMS mandated DSH audit for the state fiscal year. Payments shall be limited to the aggregate amount recouped from small rural hospitals based on these reported audit results. If the small rural hospitals' aggregate amount of underpayments reported per the audit results exceeds the aggregate amount overpaid, the payment redistribution to underpaid shall be paid on a pro rata basis

calculated using each hospital's amount underpaid divided by the sum of underpayments for all small rural hospitals.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:657 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§2707. Public State-Operated Hospitals

A. ...

B. DSH payments to individual public state-owned or operated hospitals shall be up to 100 percent of the hospital's net uncompensated costs. Final payment shall be made in accordance with final uncompensated care costs as calculated per the CMS mandated audit for the state fiscal year.

C. - D.2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:658 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#058

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments
Distinct Part Psychiatric Units
Payment Methodology (LAC 50:V.2709)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2709 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions for the reimbursement of uncompensated care costs for psychiatric services provided by non-state acute care hospitals that expand their distinct part psychiatric units and enter into an agreement with the Office of Mental Health (OMH), and established provisions for disproportionate

share hospital (DSH) payments to non-state acute care hospitals that enroll a new distinct part psychiatric unit and enter into an agreement with OMH (*Louisiana Register*, Volume 34, Number 8). The department promulgated an Emergency Rule which amended the provisions governing DSH payments to non-state distinct part psychiatric units that enter into a cooperative endeavor agreement with the department's Office of Behavioral Health (*Louisiana Register*, Volume 38, Number 2). The department now proposes to amend the February 10, 2012 Emergency Rule to clarify the provisions for the qualifying hospitals. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective May 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 10, 2012 Emergency Rule governing disproportionate share hospital payments to distinct part psychiatric units.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 3. Disproportionate Share Hospital Payments

Chapter 27. Qualifying Hospitals

§2709. Distinct Part Psychiatric Units

A. Effective for dates of service on or after February 10, 2012, a Medicaid enrolled non-state acute care hospital that enters into a cooperative endeavor agreement (CEA) with the Department of Health and Hospitals, Office of Behavioral Health to provide inpatient psychiatric hospital services to Medicaid and uninsured patients, and which also assumes the operation and management of a state-owned and formerly state-operated hospital distinct part psychiatric unit, shall be paid a per diem rate of \$581.11 per day for each uninsured inpatient.

B. Qualifying hospitals must submit costs and patient specific data in a format specified by the department.

1. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

C. Payments shall be made on a quarterly basis.

D. - F. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1627 (August 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#069

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers
Community Choices Waiver
(LAC 50:XXI.8105, Chapter 83, 8501, 8701,
8901, 8903, 9301, 9501, and 9503)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.8105, Chapter 83, §8501, §8701, §§8901-8903, §9301, and Chapter 95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services adopted provisions which established the Community Choices Waiver Program to replace the Elderly and Disabled Adults (EDA) Waiver (*Louisiana Register*, Volume 37, Number 12). The department promulgated an Emergency Rule which amended the December 20, 2011 Rule to clarify provisions governing the delivery of services, to remove the wage pass-through language that was erroneously included in the Rule, and to comply with a court-mandated standard for use in the determination of expedited Community Choices Waiver slots and addition of waiver opportunities (*Louisiana Register*, Volume 38, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 20, 2012 Emergency Rule.

This action is being taken to promote the health and welfare of waiver participants and to ensure that these services are rendered in a more cost-effective manner.

Effective June, 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the Community Choices Waiver Program.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 7. Community Choices Waiver

Chapter 81. General Provisions

§8105. Programmatic Allocation of Waiver Opportunities

A. - D. ...

E. Notwithstanding the priority group provisions, up to 300 Community Choices Waiver opportunities may be granted to qualified individuals who require expedited waiver services. These individuals shall be offered an opportunity on a first-come, first-serve basis.

1. To be considered for an expedited waiver opportunity, the individual must, at the time of the request for the expedited opportunity, be approved for the maximum

amount of services allowable under the Long Term Personal Care Services Program and require institutional placement, unless offered an expedited waiver opportunity.

2. The following criteria shall be considered in determining whether or not to grant an expedited waiver opportunity:

a. - b. ...

c. the support from an informal caregiver is not available due to a family crisis;

d. the person lives alone and has no access to informal support; or

e. for other reasons, the person lacks access to adequate informal support to prevent nursing facility placement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3517 (December 2011), amended LR 38:

Chapter 83. Covered Services

§8301. Support Coordination

A. Support coordination is services that will assist participants in gaining access to needed waiver and other State Plan services, as well as needed medical, social, educational, housing and other services, regardless of the funding source for these services. Support coordination agencies shall be required to perform the following core elements of support coordination services:

1. intake;
2. assessment;
3. plan of care development and revision;
4. linkage to direct services and other resources;
5. coordination of multiple services among multiple providers;
6. monitoring and follow-up;
7. reassessment;
8. evaluation and re-evaluation of level of care and need for waiver services;
9. ongoing assessment and mitigation of health, behavioral and personal safety risk;
10. responding to participant crisis;
11. critical incident management; and
12. transition/discharge and closure.

B. Support coordinators shall provide information and assistance to waiver participants in directing and managing their services.

1. When participants choose to self-direct their waiver services, the support coordinators are responsible for informing participants about:

- a. their responsibilities as an employer;
- b. how their activities as an employer are coordinated with the fiscal agent and support coordinator; and
- c. their responsibility to comply with all applicable state and federal laws, rules, policies, and procedures.

2. Support coordinators shall be available to participants for on-going support and assistance in these decision-making areas and with employer responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the

Office of Aging and Adult Services, LR 37:3519 (December 2011), amended LR 38:

§8305. Environmental Accessibility Adaptations

A. - A.1. ...

a. Once identified by MDS-HC, a credentialed assessor must verify the need for, and draft specifications for, the environmental accessibility adaptation(s).

b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011), amended LR 38:

§8307. Personal Assistance Services

A. - A.3. ...

4. supervision or assistance with health related tasks (any health related procedures governed under the Nurse Practice Act) in accordance with applicable laws governing the delegation of medical tasks/medication administration;

5. supervision or assistance while escorting/accompanying the participant outside of the home to perform tasks, including instrumental activities of daily living, health maintenance or other needs as identified in the POC and to provide the same supervision or assistance as would be rendered in the home; and

A.6. - C. ...

D. Community Choices Waiver participants cannot receive Long-Term Personal Care Services.

E. - E.4 ...

5. "A.m. and p.m." PAS cannot be "shared" and may not be provided on the same calendar day as other PAS delivery methods.

6. It is permissible to receive only the "a.m." or "p.m." portion of PAS within a calendar day. However, "a.m." or "p.m." PAS may not be provided on the same calendar day as other PAS delivery methods.

7. PAS providers must be able to provide both regular and "a.m." and "p.m." PAS and cannot refuse to accept a Community Choices Waiver participant solely due to the type of PAS delivery method that is listed on the POC.

F. ...

G. A home health agency direct service worker who renders PAS must be a qualified home health aide as specified in Louisiana's Minimum Licensing Standards for Home Health Agencies.

H. - I. ...

J. The following individuals are prohibited from being reimbursed for providing PAS services to a participant:

J.1. - K. ...

L. It is permissible for the PAS allotment to be used flexibly in accordance with the participant's preferences and personal schedule and OAAS' documentation requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011), amended LR 38:

§8311. Adult Day Health Care Services

A. - B. ...

1. meals, which shall not constitute a "full nutritional regimen" (three meals per day) but shall include a minimum of two snacks and a hot nutritious lunch;

2. transportation between the participant's place of residence and the ADHC in accordance with licensing standards;

B.3. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3521 (December 2011), amended LR 38:

§8313. Caregiver Temporary Support Services

A. ...

B. Federal financial participation is not claimed for the cost of room and board except when provided as part of caregiver temporary support services furnished in a facility approved by the state that is not a private residence.

C. - E. ...

F. When Caregiver temporary support is provided by an ADHC center, services may be provided no more than 10 hours per day.

G. Caregiver temporary support services may be utilized no more than 30 calendar days or 29 overnight stays per plan of care year for no more than 14 consecutive calendar days or 13 consecutive overnight stays. The service limit may be increased based on documented need and prior approval by OAAS.

H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3521 (December 2011), amended LR 38:

§8315. Assistive Devices and Medical Supplies

A. Assistive devices and medical supplies are specialized medical equipment and supplies which include devices, controls, appliances, or nutritional supplements specified in the POC that enable participants to:

A.1. - H....

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3521 (December 2011), amended LR 38:

§8321. Nursing Services

A. Nursing services are services that are medically necessary and may only be provided efficiently and effectively by a nurse practitioner, registered nurse, or a licensed practical nurse working under the supervision of a registered nurse. These nursing services must be provided within the scope of the Louisiana statutes governing the practice of nursing.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3522 (December 2011), amended LR 38:3522 (December 2011), amended LR 38:

§8323. Skilled Maintenance Therapy

A. - F.3.i. ...

4. Respiratory therapy services which provide preventative and maintenance of airway-related techniques and procedures including:

F.4.a. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3522 (December 2011), amended LR 38:

Chapter 85. Self-Direction Initiative

§8501. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the participant to coordinate the delivery of personal assistance services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the participant utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. - C.2.d.ii. ...

iii. fails to provide required documentation of expenditures and related items;

iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures and related items; or

v. violates Medicaid Program Rules or guidelines of the self-direction option.

D. Employee Qualifications. All employers under the self-direction option must:

1. be at least 18 years of age on the date of hire; and
2. complete all training mandated by OAAS within the specified timelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3523 (December 2011), amended LR 38:

Chapter 87. Plan of Care

§8701. Plan of Care

A. The applicant and support coordinator have the flexibility to construct a plan of care that serves the participant's health and welfare needs. The service package provided under the POC shall include services covered under the Community Choices Waiver in addition to services covered under the Medicaid State Plan (not to exceed the established service limits for either waiver or state plan services) as well as other services, regardless of the funding source for these services. All services approved pursuant to the POC shall be medically necessary and provided in a cost-effective manner. The POC shall be developed using a person-centered process coordinated by the support coordinator.

B. - C.1. ...

2. individual cost of each waiver service; and
3. the total cost of waiver services covered by the POC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the

Office of Aging and Adult Services, LR 37:3524 (December 2011), amended LR 38:

Chapter 89. Admission and Discharge Criteria

§8901. Admission Criteria

A. - A.5. ...

B. Failure of the individual to cooperate in the eligibility determination or plan of care development processes or to meet any of the criteria above shall result in denial of admission to the Community Choices Waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011), amended LR 38:

§8903. Admission Denial or Discharge Criteria

A. - A.6. ...

7. The individual fails to cooperate in the eligibility determination or plan of care development processes or in the performance of the POC.

8. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3524 (December 2011), amended LR 38:

Chapter 93. Provider Responsibilities

§9301. General Provisions

A. ...

B. The provider agrees to not request payment unless the participant for whom payment is requested is receiving services in accordance with the Community Choices Waiver Program provisions and the services have been prior authorized and actually provided.

C. Any provider of services under the Community Choices Waiver shall not refuse to serve any individual who chooses their agency unless there is documentation to support an inability to meet the individual's health, safety and welfare needs, or all previous efforts to provide services and supports have failed and there is no option but to refuse services.

C.1. - D. ...

E. Any provider of services under the Community Choices Waiver shall not interfere with the eligibility, assessment, care plan development, or care plan monitoring processes including, but not limited to:

1. harassment;
2. intimidation; or
3. threats against program participants or members of their informal support network, of DHH, or support coordination staff.

F. Any provider of services under the Community Choices Waiver shall have the capacity and resources to provide all aspects of any service they are enrolled to provide in the specified service area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the

Office of Aging and Adult Services, LR 37:3524 (December 2011), amended LR 38:

Chapter 95. Reimbursement

§9501. Reimbursement Methodology

A. - A.1.c. ...

2. in-home caregiver temporary support service when provided by a personal care services or home health agency;

3. caregiver temporary support services when provided by an adult day health care center; and

4. adult day health care services.

B. - G. ...

H. Reimbursement shall not be made for Community Choices Waiver services provided prior to the department's approval of the POC.

I. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011), amended LR 38:

§9503. Direct Support Professionals Minimum Wage

A. The minimum hourly rate paid to direct support professionals shall be at least the current federal minimum wage.

A.1. - B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011), amended LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#060

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing
and**

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice
Money Follows the Person Rebalancing Demonstration
Extension
(LAC 50:XXI.11107)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with

Developmental Disabilities amend LAC 50:XXI.11107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions in the Children's Choice Waiver for the allocation of additional waiver opportunities for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities for children who have been identified by the Office for Citizens with Developmental Disabilities regional offices and human services authorities and districts as meeting state-funded family support criteria for priority level 1 and 2, and needing more family support services than what is currently available through state-funded family support services (*Louisiana Register*, Volume 36, Number 9).

The allocation of opportunities for the Money Follows the Person Rebalancing Demonstration Program was scheduled to end September 30, 2011. Section 2403 of the Affordable Care Act of 2010 authorized an extension of the Money Follows the Person Rebalancing Demonstration Program until September 30, 2016. The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver in order to allow allocation of waiver opportunities until September 30, 2016 (*Louisiana Register*, Volume 37, Number 9). This Emergency Rule is being promulgated to continue the provisions of the September 28, 2011 Emergency Rule. This action is being taken to secure enhanced federal funding.

Effective May 29, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the allocation of opportunities in the Children's Choice Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 9. Children's Choice

Chapter 111. General Provisions §11107. Allocation of Waiver Opportunities

A. - B. ...

1. The MFP Rebalancing Demonstration will stop allocation of opportunities on September 30, 2016.

a. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed before September 30, 2016, the opportunity will be returned to the MFP Rebalancing Demonstration pool and an offer will be made based upon the approved program guidelines.

b. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed after September 30, 2016, the opportunity will cease to exist.

C. - C.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#059

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Distinct Part Psychiatric Units
Reimbursement Methodology
(LAC 50:V.915 and 959)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.915 and §959 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 18 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing inpatient psychiatric services to allow acute care hospitals that enter into an agreement with the Office of Mental Health [currently the Office of Behavioral Health] to expand their distinct part psychiatric unit beds and receive Medicaid reimbursement for the patients who occupy the additional beds (*Louisiana Register*, Volume 34, Number 9).

The department promulgated an Emergency rule which amended the provisions governing the reimbursement methodology for inpatient psychiatric hospital services rendered by distinct part psychiatric units of acute care hospitals that enter into a cooperative endeavor agreement (CEA) with the Department of Health and Hospitals, Office of Behavioral Health (*Louisiana Register*, Volume 38, Number 2). The department now proposes to amend the February 10, 2012 Emergency Rule to clarify the provisions governing qualifying hospitals. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective May 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 10, 2012 Emergency Rule governing the reimbursement methodology for inpatient

psychiatric hospital services rendered by distinct part psychiatric units.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 1. Inpatient Hospitals Services

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter A. General Provisions

§915. Distinct Part Psychiatric Units

A. ...

1.a. - b. Repealed.

B. Effective for dates of service on or after February 10, 2012, a Medicaid enrolled non-state acute care hospital that enters into a Cooperative Endeavor Agreement (CEA) with the Department of Health and Hospitals, Office of Behavioral Health to provide inpatient psychiatric hospital services to Medicaid and uninsured patients, and which also assumes the operation and management of a state-owned and formerly state-operated hospital distinct part psychiatric unit, may make a one-time increase in its number of beds with a one-time opening of a new distinct part psychiatric unit.

1. This expansion or opening of a new unit will not be recognized, for Medicare purposes, until the beginning of the next cost reporting period. At the next cost reporting period, the hospital must meet the Medicare Prospective Payment System (PPS) exemption criteria and enroll as a Medicare PPS excluded distinct part psychiatric unit.

2. At the time of any expansion or opening of a new distinct part psychiatric unit, the provider must provide a written attestation that they meet all Medicare PPS rate exemption criteria.

3. Admissions to this expanded or new distinct part psychiatric unit may not be based on payer source.

C. Changes in the Status of Hospital Units. The status of each hospital unit is determined at the beginning of each cost reporting period and is effective for the entire cost reporting period. Any changes in the status of a unit are made only at the start of a cost reporting period.

1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 20:49 (January 1994), amended LR 34:1913 (September 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter B. Reimbursement Methodology

§959. Inpatient Psychiatric Hospital Services

A. - J. ...

K. Effective for dates of service on or after February 10, 2012, a Medicaid enrolled non-state acute care hospital that enters into a Cooperative Endeavor Agreement (CEA) with the Department of Health and Hospitals, Office of Behavioral Health to provide inpatient psychiatric hospital services to Medicaid and uninsured patients, and which also assumes operation and management of formerly state-owned and operated psychiatric hospital/visits, shall be paid a per diem rate of \$581.11 per day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), repromulgated LR 35:2183 (October 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November, 2010), LR 37:2162 (July 2011), LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#070

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services Healthcare-Acquired and Provider Preventable Conditions (LAC 50:V.109)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.109 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 2702 of the Patient Protection and Affordable Care Act (ACA) of 2010 directed the Secretary of the U.S. Department of Health and Human Services (DHHS) to establish Medicaid regulations which prohibit federal payments to states for any amounts expended for providing medical assistance for healthcare-acquired conditions and never events. In June 2011, the DHHS, Centers for Medicare and Medicaid Services (CMS) implemented the requirements of §2702.

In compliance with §2702 of ACA, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the provisions governing inpatient hospital services to prohibit Medicaid reimbursement for erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental to the health and safety of the patient. This includes procedures and events that should never happen in a medical setting, commonly known as “never events”. This action is being taken to promote the health and welfare of Medicaid recipients who rely on quality inpatient hospital services. It is anticipated that implementation of this Emergency Rule will result in programmatic savings to the state; however, the amount of savings is indeterminable for state fiscal year 2012-2013.

Effective July 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing inpatient hospital services to prohibit Medicaid reimbursement to providers for the performance of erroneous medical procedures attributed to healthcare-acquired and provider preventable conditions.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 1. General Provisions

§109. Healthcare-Acquired and Provider Preventable Conditions

A. Effective for dates of service on or after July 1, 2012, the Medicaid Program will not provide reimbursement for healthcare-acquired or provider preventable conditions which result in medical procedures performed in error and have a serious, adverse impact to the health of the Medicaid recipient.

B. Reimbursement shall not be provided for the following healthcare-acquired conditions (for any inpatient hospital settings participating in the Medicaid Program) including:

1. foreign object retained after surgery;
2. air embolism;
3. blood incompatibility;
4. stage III and IV pressure ulcers;
5. falls and trauma, including:
 - a. fractures;
 - b. dislocations;
 - c. intracranial injuries;
 - d. crushing injuries;
 - e. burns; or
 - f. electric shock;
6. catheter-associated urinary tract infection (UTI);
7. vascular catheter-associated infection
8. manifestations of poor glycemic control; including:
 - a. iabetic ketoacidosis;
 - b. nonketotic hyperosmolar coma;
 - c. hypoglycemic coma;
 - d. secondary diabetes with ketoacidosis; or
 - e. secondary diabetes with hyperosmolarity;
9. surgical site infection following:
 - a. coronary artery bypass graft (CABG)-mediastinitis;
 - b. bariatric surgery, including:
 - i. laparoscopic gastric bypass;
 - ii. gastroenterostomy; or
 - iii. laparoscopic gastric restrictive surgery; or
 - c. orthopedic procedures, including:
 - i. spine;
 - ii. neck;
 - iii. shoulder; or
 - iv. elbow; or
10. deep vein thrombosis (DVT)/pulmonary embolism (PE) following total knee replacement or hip replacement with pediatric and obstetric exceptions; or

C. Reimbursement shall not be provided for the following provider preventable conditions, (for any inpatient hospital settings participating in the Medicaid Program) including:

1. wrong surgical or other invasive procedure performed on a patient;
2. surgical or other invasive procedure performed on the wrong body part; or
3. surgical or other invasive procedure performed on the wrong patient.

D. For discharges on or after July 1, 2012, all hospitals are required to bill the appropriate present-on-admission (POA) indicator for each diagnosis code billed. All claims with a POA indicator with a health care-acquired condition code will be denied payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#071

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Small Rural Hospitals
Low Income and Needy Care Collaboration
(LAC 50:V.1125)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1125 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for inpatient acute care services and psychiatric services (*Louisiana Register*, Volume 35, Number 5). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to provide for a supplemental Medicaid payment to small rural hospitals that enter into an agreement with a state or

local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 37, Number 11). This Emergency Rule is being promulgated to continue the provisions of the October 20, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective June 18, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by small rural hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 11. Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§1125. Small Rural Hospitals

A. - D. ...

E. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments shall be issued to qualifying non-state acute care hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#061

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Intermediate Care Facilities for Persons with
Developmental Disabilities—Public Facilities
Reimbursement Methodology
(LAC 50:VII.32965-32969)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:VII.32965-32969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for state-operated intermediate care facilities for persons with developmental disabilities (ICFs/DD) and established payments using a formula that established per diem rates at the Medicare upper payment limit for these services (*Louisiana Register*, Volume 29, Number 11). Upon submission of the corresponding State Plan amendment to the Centers for Medicare and Medicaid Services for review and approval, the department determined that it was also necessary to establish provisions in the Medicaid State Plan governing the reimbursement methodology for quasi-public ICFs/DD. The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for public ICFs/DD to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule also adopted all of the provisions governing reimbursements to state-owned and operated facilities and quasi-public facilities in a codified format for inclusion in the *Louisiana Administrative Code*. The department promulgated an Emergency Rule which amended the August 1, 2010 Emergency Rule to revise the provisions governing transitional rates for public facilities (*Louisiana Register*, Volume 37, Number 6). The department promulgated an Emergency Rule which amended the July 1, 2011 Emergency Rule to clarify the provisions for facilities serving a high concentration of medically fragile individuals (*Louisiana Register*, Volume 37, Number 10). This Emergency Rule is being promulgated to continue the provisions of the October 20, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective June 18, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter C. Public Facilities

§32965. State-Owned and Operated Facilities

A. Medicaid payments to state-owned and operated intermediate care facilities for persons with developmental disabilities are based on the Medicare formula for determining the routine service cost limits as follows:

1. calculate each state-owned and operated ICF/DD's per diem routine costs in a base year;
2. calculate 112 percent of the average per diem routine costs; and
3. inflate 112 percent of the per diem routine costs using the skilled nursing facility (SNF) market basket index of inflation.

B. Each state-owned and operated facility's capital and ancillary costs will be paid by Medicaid on a "pass-through" basis.

C. The sum of the calculations for routine service costs and the capital and ancillary costs "pass-through" shall be the per diem rate for each state-owned and operated ICF/DD. The base year cost reports to be used for the initial calculations shall be the cost reports for the fiscal year ended June 30, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§32967. Quasi-Public Facilities

A. Medicaid payment to quasi-public facilities is a facility-specific prospective rate based on budgeted costs. Providers shall be required to submit a projected budget for the state fiscal year beginning July 1.

B. The payment rates for quasi-public facilities shall be determined as follows:

1. determine each ICF/DD's per diem for the base year beginning July 1;
2. calculate the inflation factor using an average CPI index applied to each facility's per diem for the base year to determine the inflated per diem;
3. calculate the median per diem for the facilities' base year;
4. calculate the facility's routine cost per diem for the SFY beginning July 1 by using the lowest of the budgeted, inflated or median per diem rates plus any additional allowances; and
5. calculate the final approved per diem rate for each facility by adding routine costs plus any "pass through" amounts for ancillary services, provider fees, and grant expenses.

C. Providers may request a final rate adjustment subject to submission of supportive documentation and approval by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§32969. Transitional Rates for Public Facilities

A. Effective August 1, 2010, the department shall establish a transitional Medicaid reimbursement rate of \$302.08 per day per individual for a public ICF/DD community home that is transitioning to a private facility, provided that the community home meets the following criteria. The community home:

1. shall have a fully executed Cooperative Endeavor Agreement (CEA) with the Office for Citizens with Developmental Disabilities for the private operation of the facility;

2. shall have a high concentration of medically fragile individuals being served, as determined by the department;

a. for purposes of these provisions, a medically fragile individual shall refer to an individual who has a medically complex condition characterized by multiple, significant medical problems that require extended care;

3. incurs or will incur higher existing costs not currently captured in the private ICF/DD rate methodology; and

4. shall have no more than six beds.

B. The transitional Medicaid reimbursement rate shall only be for the period of transition, which is defined as the term of the CEA or a period of three years, whichever is shorter.

C. The transitional Medicaid reimbursement rate is all-inclusive and incorporates the following cost components:

1. direct care staffing;
2. medical/nursing staff, up to 23 hours per day;
3. medical supplies;
4. transportation;
5. administrative; and
6. the provider fee.

D. If the community home meets the criteria in §32969.C and the individuals served require that the community home has a licensed nurse at the facility 24 hours per day, seven days per week, the community home may apply for a supplement to the transitional rate. The supplement to the rate shall not exceed \$25.33 per day per individual.

E. The total transitional Medicaid reimbursement rate, including the supplement, shall not exceed \$327.41 per day per individual.

F. The transitional rate and supplement shall not be subject to the following:

1. inflationary factors or adjustments;
2. rebasing;
3. budgetary reductions; or
4. other rate adjustments.

G. Effective July 1, 2011, the transitional rate for public facilities over 50 beds that are privatizing shall be restored to the rates in effect on January 1, 2009 for a six to eight bed facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#062

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Diabetes Self-Management Training
(LAC 50:V.Chapter 63)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 63 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 11 of the 2010 Regular Session of the Louisiana Legislature authorized the Department of Health and Hospitals, through its primary and preventive care activity, to provide reimbursement to providers for rendering services that will educate and encourage Medicaid enrollees to obtain appropriate preventive and primary care in order to improve their overall health and quality of life.

In keeping with the intent of Act 11, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions in the Hospital Program to provide Medicaid reimbursement for diabetes self-management training (DSMT) services rendered in an outpatient hospital setting (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2011 Emergency Rule. It is anticipated that this new service will promote improved patient self-management skills which will reduce diabetes-related complications that adversely affect quality of life, and subsequently reduce Medicaid costs associated with the care of recipients diagnosed with diabetes-related illnesses. This action is being taken to promote the health and welfare of Medicaid recipients diagnosed with diabetes and to ultimately reduce the Medicaid costs associated with their care.

Effective June 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Hospital Program to provide coverage for diabetes self-management training services rendered in an outpatient hospital setting.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 63. Diabetes Education Services

Subchapter A. General Provisions

§6301. Introduction

A. Effective for dates of service on or after February 20, 2011, the department shall provide coverage of diabetes self-management training (DSMT) services rendered to Medicaid recipients diagnosed with diabetes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§6303. Scope of Services

A. DSMT services shall be comprised of one hour of individual instruction and nine hours of group instruction on diabetes self-management.

B. Service Limits. Recipients shall receive up to 10 hours of services during the first 12-month period following the initial order. After the first 12-month period has ended, recipients shall only be eligible for two hours of individual instruction on diabetes self-management every 12 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§6305. Provider Participation

A. In order to receive Medicaid reimbursement, outpatient hospitals must have a DSMT program that meets the quality standards of one of the following accreditation organizations:

1. the American Diabetes Association;
2. the American Association of Diabetes Educators; or
3. the Indian Health Service.

B. All DSMT programs must adhere to the national standards for diabetes self-management education.

1. Each member of the instructional team must:
a. be a certified diabetes educator (CDE) certified by the National Certification Board for Diabetes Educators; or

b. have recent didactic and experiential preparation in education and diabetes management.

2. At a minimum, the instructional team must consist of one the following professionals who is a CDE:

- a. a registered dietician;
- b. a registered nurse; or
- c. a pharmacist.

3. All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

C. Members of the instructional team must be either employed by or have a contract with a Medicaid enrolled outpatient hospital that will submit the claims for reimbursement of outpatient DSMT services rendered by the team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter B. Reimbursement

§6311. Reimbursement Methodology

A. Effective for dates of service on or after February 20, 2011, the Medicaid Program shall provide reimbursement for diabetes self-management training services rendered by qualified health care professionals in an outpatient hospital setting.

B. Reimbursement for DSMT services shall be a flat fee based on the appropriate Healthcare Common Procedure Coding (HCPC) code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#063

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Personal Care Services—Long-Term
Policy Clarifications and Service Limit Reduction
(LAC 50:XV.12901-12909 and 12911-12915)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend 901-12909 and §§12911-12915 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Senate Resolution 180 and House Resolution 190 of the 2008 Regular Session of the Louisiana Legislature directed the department to develop and implement cost control mechanisms to provide the most cost-effective means of financing the Long-Term Personal Care Services (LT-PCS) Program. In compliance with these legislative directives, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the LT-PCS Program to: 1) implement uniform needs-based assessments

for authorizing service units; 2) reduce the limit on LT-PCS service hours; 3) mandate that providers must show cause for refusing to serve clients; and 4) incorporate provisions governing an allocation of weekly service hours (*Louisiana Register*, Volume 35, Number 11).

The department promulgated an Emergency Rule which amended the provisions governing long-term personal care services to: 1) establish provisions that address requests for services; 2) revise the eligibility criteria for LT-PCS; 3) clarify the provisions governing restrictions for paid direct care staff and the place of service; and 4) reduce the maximum allowed service hours (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the September 5, 2010 Emergency Rule to clarify the provisions of the Rule (*Louisiana Register*, Volume 36, Number 12). The department promulgated an Emergency Rule which amended the provisions of the December 20, 2010 Emergency Rule to further clarify the provisions of the Rule (*Louisiana Register*, Volume 37, Number 4). The department promulgated an Emergency Rule which amended the provisions of the April 20, 2011 Emergency Rule to bring these provisions in line with current licensing standards (*Louisiana Register*, Volume 37, Number 11). The department promulgated an Emergency Rule which amended the November 20, 2011 Emergency Rule to clarify the provisions governing the staffing requirements for LT-PCS (*Louisiana Register*, Volume 38, Number 1). The January 20, 2012 Emergency Rule was published with an error in the effective date and repromulgated with an editor's note in the February 2012 *Louisiana Register* (*Louisiana Register*, Volume 38, Number 2). The department promulgated an Emergency Rule which amended the January 20, 2012 Emergency Rule to clarify provisions governing the place of service delivery (*Louisiana Register*, Volume 38, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 20, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective June 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing long-term personal care services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. The purpose of personal care services is to assist individuals with functional impairments with their daily living activities. Personal care services must be provided in accordance with an approved service plan and supporting documentation. In addition, personal care services must be coordinated with the other Medicaid and non-Medicaid services being provided to the recipient and will be considered in conjunction with those other services.

B. Each recipient requesting or receiving long-term personal care services (LT-PCS) shall undergo a functional eligibility screening utilizing an eligibility screening tool

called the Level of Care Eligibility Tool (LOCET), or a subsequent eligibility tool designated by the Office of Aging and Adult Services (OAAS).

C. Each LT-PCS applicant/recipient shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC) or a subsequent assessment tool designated by OAAS. The MDS-HC is designed to verify that an individual meets eligibility qualifications and to determine resource allocation while identifying his/her need for support in performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The MDS-HC assessment generates a score which measures the recipient's degree of self-performance of late-loss activities of daily living during the period just before the assessment.

1. The late-loss ADLs are eating, toileting, transferring and bed mobility. An individual's assessment will generate a score which is representative of the individual's degree of self-performance on these four late-loss ADLs.

2. - 7. Repealed.

D. Based on the applicant/recipient's uniform assessment score, he/she is assigned to a level of support category and is eligible for a set allocation of weekly service hours associated with that level.

1. If the applicant/recipient disagrees with his/her allocation of weekly service hours, the applicant/recipient or his/her responsible representative may request a fair hearing to appeal the decision.

2. The applicant/recipient may qualify for more hours if it can be demonstrated that:

a. one or more answers to the questions involving late-loss ADLs are incorrect as recorded on the assessment; or

b. he/she needs additional hours to avoid entering into a nursing facility.

E. Requests for personal care services shall be accepted from the following individuals:

1. a Medicaid recipient who wants to receive personal care services;

2. an individual who is legally responsible for a recipient who may be in need of personal care services; or

3. a responsible representative designated by the recipient to act on his/her behalf in requesting personal care services.

F. Each recipient who requests PCS has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the recipient to act on his/her behalf in the process of accessing and/or maintaining personal care services.

1. The appropriate form authorized by OAAS shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not give legal authority for that individual to independently handle the recipient's business without his/her involvement.

b. The written designation is valid until revoked by the recipient. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:
 - a. assist and represent the recipient in the assessment, care plan development and service delivery processes; and
 - b. to aid the recipient in obtaining all necessary documentation for these processes.

3 - 4. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009), LR 38:

§12902. Participant Direction Option

A. The Office of Aging and Adult Services implements a pilot program, the Louisiana Personal Options Program (La POP), which will allow recipients who receive long term personal care services (LT-PCS) to have the option of utilizing an alternative method to receive and manage their services. Recipients may direct and manage their own services by electing to participate in La POP, rather than accessing their services through a traditional personal care agency.

1. La POP shall be implemented through a phase-in process in Department of Health and Hospitals administrative regions designated by OAAS.

A.2. - B.1. ...

2. With the assistance of a services consultant, participants develop a personal support plan based on their approved plan of care and choose the individuals they wish to hire to provide the services.

C. - E.1. ...

2. Change in Condition. The participant's ability to direct his/her own care diminishes to a point where he/she can no longer do so and there is no responsible representative available to direct the care.

3. Misuse of Monthly Allocation of Funds. The LA POP participant or his/her responsible representative uses the monthly budgeted funds to purchase items unrelated to personal care needs or otherwise misappropriate the funds.

4. Failure to Provide Required Documentation. The participant or his/her responsible representative fails to complete and submit employee time sheets in a timely and accurate manner, or provide required documentation of expenditures and related items as prescribed in the Louisiana Personal Options Program's Roles and Responsibility agreement.

5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12903. Covered Services

A. Personal care services are defined as those services that provide assistance with the distinct tasks associated with the performance of the activities of daily living (ADLs) and

the instrumental activities of daily living (IADLs). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by him/herself. ADLs are those personal, functional activities required by the recipient. ADLs include tasks such as:

1. - 5. ...
6. ambulation;
7. toileting; and
8. bed mobility.

B. IADLs are those activities that are considered essential, but may not require performance on a daily basis. IADLs cannot be performed in the recipient's home when he/she is absent from the home. IADLs include tasks such as:

1. light housekeeping;
2. food preparation and storage;
3. shopping;
4. laundry;
5. assisting with scheduling medical appointments when necessary;
6. accompanying the recipient to medical appointments when necessary;
7. assisting the recipient to access transportation;
8. reminding the recipient to take his/her medication as prescribed by the physician; and
9. medically non-complex tasks where the direct service worker has received the proper training pursuant to R.S. 37:1031-1034.

C. Emergency and nonemergency medical transportation is a covered Medicaid service and is available to all recipients. Non-medical transportation is not a required component of personal care services. However, providers may choose to furnish transportation for recipients during the course of providing personal care services. If transportation is furnished, the provider agency must accept any liability for their employee transporting a recipient. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance.

1. La POP participants may choose to use some of their monthly budget to purchase non-medical transportation.

a. If transportation is furnished, the participant must accept all liability for their employee transporting them. It is the responsibility of the participant to ensure that the employee has a current, valid driver's license and automobile liability insurance.

D. ...

E. La POP participants may choose to use their services budgets to pay for items that increase their independence or substitute for their dependence on human assistance. Such items must be purchased in accordance with the policies and procedures established by OAAS.G. Personal care services may be provided by one worker for up to three long-term personal care service recipients who live together and who have a common direct service provider.

F. Personal care services may be provided by one worker for up to three long-term personal care service recipients who live together and who have a common direct service provider.

G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12905. Eligibility Criteria

A. ...

B. Recipients must meet the eligibility criteria established by OAAS or its designee. Personal care services are medically necessary if the recipient:

1. meets the medical standards for admission to a nursing facility and requires limited assistance with at least one or more activities of daily living;

B.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12907. Recipient Rights and Responsibilities

A. - A.2. ...

3. training the individual personal care worker in the specific skills necessary to maintain the recipient's independent functioning while maintaining him/her in the home;

4. developing an emergency component in the plan of care that includes a list of personal care staff who can serve as back-up when unforeseen circumstances prevent the regularly scheduled worker from providing services;

5. - 9. ...

B. Changing Providers. Recipients may request to change PCS agencies without cause once after each three month interval during the service authorization period. Recipients may request to change PCS providers with good cause at any time during the service authorization period. Good cause is defined as the failure of the provider to furnish services in compliance with the plan of care. Good cause shall be determined by OAAS or its designee.

C. In addition to these rights, a La POP participant has certain responsibilities, including:

1. ...

2. notifying the services consultant at the earliest reasonable time of admission to a hospital, nursing facility, rehabilitation facility or any other institution;

2.a.— 8. ...

9. training the direct service worker in the specific skills necessary to maintain the participant's independent functioning to remain in the home;

10. - 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832

(December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12909. Standards for Participation

A. - A.1.c. ...

d. any federal or state laws, Rules, regulations, policies and procedures contained in the Medicaid provider manual for personal care services, or other document issued by the department. Failure to do may result in sanctions.

2. ...

B. In addition, a Medicaid enrolled agency must:

1. maintain adequate documentation as specified by OAAS, or its designee, to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department or its designee; and

2. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations.

3 - 12.c. Repealed.

C. An LT-PCS provider shall not refuse to serve any individual who chooses his agency unless there is documentation to support an inability to meet the individual's needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

C.1. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), amended LR 38:

§12910. La POP Standards for Participation

A. Direct service workers employed under LA POP must meet the same requirements as those hired by a PCS agency.

B. All workers must be employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations.

B.1. - C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§12911. Staffing Requirements

A. All staff providing direct care to the recipient, whether they are employed by a PCS agency or a recipient participating in La POP, must meet the qualifications for furnishing personal care services per the licensing regulations. The direct service worker shall demonstrate empathy toward the elderly and persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job.

B. - B.3. Repealed.

C. Restrictions

1. The following individuals are prohibited from being reimbursed for providing services to a recipient:

- a. the recipient’s spouse;
- b. the recipient’s curator;
- c. the recipient’s tutor;
- d. the recipient’s legal guardian;
- e. the recipient’s designated responsible representative; or

f. the person to whom the recipient has given Representative and Mandate authority (also known as Power of Attorney).

D. - E.1.b. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12912. Training

A. Training costs for direct service workers employed by La POP participants shall be paid out of the La POP participant’s personal supports plan budget.

B. - H. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§12913. Service Delivery

A. Personal care services shall be provided in the recipient’s home or in another location outside of the recipient’s home if the provision of these services allows the recipient to participate in normal life activities pertaining to the IADLs cited in the plan of care. The recipient’s home is defined as the place where he/she resides such as a house, an apartment, a boarding house, or the house or apartment of a family member or unpaid primary care-giver. IADLs cannot be performed in the recipient’s home when the recipient is absent from the home.

1. - 4. Repealed.

B. The provision of services outside of the recipient’s home does not include trips outside of the borders of the state without written prior approval of OAAS or its designee, through the plan of care or otherwise.

C. Participants are not permitted to receive LT-PCS while living in a home or property owned, operated, or controlled by a provider of services who is not related by blood or marriage to the participant.

1 - 3. Repealed.

D. - E. ...

F. It is permissible for an LT-PCS recipient to use his/her approved LT-PCS weekly allotment flexibly provided that it is done so in accordance with the recipient’s preferences and personal schedule and is properly documented in accordance with OAAS policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended LR 30:2833 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Financing and the Office of Aging and Adult Services, LR 38:

§12915. Service Limitations

A. Personal care services shall be limited to up to 32 hours per week. Authorization of service hours shall be considered on a case-by-case basis as substantiated by the recipient’s plan of care and supporting documentation.

B. There shall be no duplication of services.

1. Personal care services may not be provided while the recipient is admitted to or attending a program which provides in-home assistance with IADLs or ADLs or while the recipient is admitted to or attending a program or setting where such assistance is available to the recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), amended LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#064

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Pharmacy Benefits Management Program
Maximum Allowable Costs
(LAC 50:XXIX.949)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXIX.949 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Pharmacy Benefits Management Program in a codified format in Title 50 of the *Louisiana Administrative Code* (Louisiana

Register, Volume 32, Number 6). The department later promulgated a Rule (*Louisiana Register*, Volume 34, Number 1) amending the provisions of the June 20, 2006 Rule governing methods of payments in order to comply with the directives of Act 801 of the 2006 Regular Session of the Louisiana Legislature, which directed the department to submit a Medicaid State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) to increase the Medicaid dispensing fee on prescription drugs, contingent upon CMS' approval of the proposed amendment. CMS subsequently disapproved the proposed amendment to the Medicaid State Plan that had been submitted in compliance with Act 801. An Emergency Rule was later promulgated to repeal the January 20, 2008 Rule and to restore the repealed provisions of the June 20, 2006 Rule in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 1).

Act 10 of the 2009 Regular Session of the Louisiana Legislature provided that the department may redefine the reimbursement methodology for multiple source drugs in establishing the state maximum allowable cost (MAC) in order to control expenditures to the level of appropriations for the Medicaid Program. In accordance with the provisions of Act 10, the department promulgated an Emergency Rule to redefine the Louisiana maximum allowable cost (LMAC) (*Louisiana Register*, Volume 36, Number 1). In addition, the dispensing fee was increased for drugs with an LMAC.

The department subsequently determined that it was necessary to repeal the January 1, 2010 Emergency Rule in its entirety and amend the provisions governing the methods of payment for prescription drugs to redefine the LMAC (*Louisiana Register*, Volume 36, Number 2). The department promulgated an Emergency Rule to amend the February 1, 2010 Emergency Rule to revise the provisions governing the methods of payment for prescription drugs to further redefine the LMAC and increase the dispensing fee (*Louisiana Register*, Volume 36, Number 3). The department determined that it was necessary to repeal the March 1, 2010 Emergency Rule in its entirety and promulgated an Emergency Rule to amend the provisions governing the methods of payment for prescription drugs to revise the LMAC provisions (*Louisiana Register*, Volume 36, Number 3). This Emergency Rule is being promulgated to continue the provisions of the March 20, 2010 Emergency Rule. This action is being taken to control expenditures in the Medical Assistance Program and to avoid a budget deficit.

Effective June 13, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the methods of payment for prescriptions covered under the Pharmacy Benefits Management Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 9. Methods of Payment

Subchapter D. Maximum Allowable Costs

§949. Cost Limits

A. - B. ...

1. Louisiana maximum allowable cost (LMAC) is the average actual acquisition cost of a drug, defined as the

pharmacist's payment made to purchase a drug product, adjusted by a multiplier of 2.35.

2. LMAC reimbursement will apply to certain multiple source drug products that meet therapeutic equivalency, market availability, and other criteria deemed appropriate by the Louisiana Medicaid Agency. Drugs are subject to LMAC if there are at least two non-innovator multiple source alternative products available that are classified by the FDA as Category "A" in the Approved Drug Products with Therapeutic Equivalence Evaluations.

3. LMAC rates are based on the average actual acquisition cost per drug, adjusted by a multiplier of 2.35, which assures that each rate is sufficient to allow reasonable access by providers to the drug at or below the established LMAC rate. The LMAC rate will apply to all versions of a drug that share the same active ingredient combination, strength, dosage form, and route of administration.

4. Average actual acquisition cost will be determined through a semi-annual collection and review of pharmacy invoices and other information deemed necessary by the Louisiana Medicaid Agency and in accordance with applicable state and federal law.

5. In addition to the semi-annual review, the Louisiana Medicaid Agency will evaluate on an ongoing basis throughout the year and adjust the rates as necessary to reflect prevailing market conditions and to assure that pharmacies have reasonable access to drugs at or below the applicable LMAC rate. Providers shall be given advance notice of any additions, deletions, or adjustments in price. A complete LMAC rate listing will be available to providers and updated periodically.

6. In no case shall a recipient be required to provide payment for any difference in a prescription price that may occur with implementation of the LMAC limit, nor may BHSF use a cost which exceeds the established maximums except for physician certification for brand name drugs.

C. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program—Diabetes
Self-Management Training
(LAC 50:IX.Chapter 7 and 15103)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.Chapter 7 and §15103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 11 of the 2010 Regular Session of the Louisiana Legislature authorized the Department of Health and Hospitals, through its primary and preventive care activity, to provide reimbursement to providers for rendering services that will educate and encourage Medicaid enrollees to obtain appropriate preventive and primary care in order to improve their overall health and quality of life. In keeping with the intent of Act 11, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Professional Services Program to provide Medicaid reimbursement for diabetes self-management training (DSMT) services (*Louisiana Register*, Volume 37, Number 2). It is anticipated that this new service will promote improved patient self-management skills which will reduce diabetes-related complications that adversely affect quality of life, and subsequently reduce Medicaid costs associated with the care of recipients diagnosed with diabetes-related illnesses.

The department promulgated an Emergency Rule which amended the provisions of the February 20, 2011 Emergency Rule governing the Professional Services Program in order to clarify the provider participation requirements for the provision of DSMT services (*Louisiana Register*, Volume 37, Number 6). This action is being taken to promote the health and welfare of Medicaid recipients diagnosed with diabetes and to reduce the Medicaid costs associated with their care.

Effective June 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 20, 2011 Emergency Rule governing diabetes self-management training services rendered in the Professional Services Program.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 1. General Provisions

Chapter 7. Diabetes Education Services

§701. General Provisions

A. Effective for dates of service on or after February 20, 2011, the department shall provide coverage of diabetes self-management training (DSMT) services rendered to Medicaid recipients diagnosed with diabetes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§703. Scope of Services

A. DSMT shall be comprised of one hour of individual instruction and nine hours of group instruction on diabetes self-management.

B. Service Limits. Recipients shall receive up to 10 hours of services during the first 12-month period beginning with the initial training. After the first 12-month period has ended, recipients shall only be eligible for two hours of individual instruction on diabetes self-management per calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§705. Provider Participation

A. In order to receive Medicaid reimbursement, professional services providers must have a DSMT program that meets the quality standards of one of the following accreditation organizations:

1. the American Diabetes Association;
2. the American Association of Diabetes Educators; or
3. the Indian Health Service.

B. All DSMT programs must adhere to the national standards for diabetes self-management education.

1. Each member of the instructional team must:
 - a. be a certified diabetes educator (CDE) certified by the National Certification Board for Diabetes Educators; or
 - b. have recent didactic and experiential preparation in education and diabetes management.
2. At a minimum, the instructional team must consist of one the following professionals who are also a CDE:
 - a. a registered dietician;
 - b. a registered nurse; or
 - c. a pharmacist.
3. All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

C. Members of the instructional team must be either employed by or have a contract with a Medicaid enrolled professional services provider that will submit the claims for reimbursement of DSMT services rendered by the team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter A. General Provisions

§15103. Diabetes Education Services

A. Effective for dates of service on or after February 20, 2011, the Medicaid Program shall provide reimbursement for diabetes self-management training services rendered by qualified health care professionals.

B. Reimbursement for DSMT services shall be a flat fee based on the appropriate Healthcare Common Procedure Coding (HCPC) code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#066

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program
Reimbursement Methodology
Never Events (LAC 50:IX.15107)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.15107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 2702 of the Patient Protection and Affordable Care Act (ACA) of 2010 directed the Secretary of the U.S. Department of Health and Human Services (DHHS) to establish Medicaid regulations which prohibit federal payments to states for any amounts expended for providing medical assistance for healthcare-acquired conditions and never events. In June 2011, the DHHS, Centers for Medicare and Medicaid Services (CMS) implemented the requirements of §2702.

In compliance with §2702 of ACA, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the provisions governing the reimbursement methodology for the Professional Services Program to prohibit Medicaid reimbursement for erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental to the health and safety of the patient. This includes procedures and events that should never happen in a medical setting, commonly known as “never events”. This action is being taken to promote the health and welfare of Medicaid recipients who rely on the services rendered in the Professional Services Program. It is anticipated that implementation of this Emergency Rule will result in programmatic savings to the state; however, the amount of savings is indeterminable for state fiscal year 2012-2013.

Effective July 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions in the Professional Services Program to prohibit

Medicaid reimbursement to providers for the performance of erroneous medical procedures and never events.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter A. General Provisions

§15107. Never Events

A. Effective for dates of service on or after July 1, 2012, the Medicaid Program will not provide reimbursement to providers in the Professional Services Program for “never events” or medical procedures performed in error which are preventable and have a serious, adverse impact to the health of the Medicaid recipient. Reimbursement will not be provided when the following “never events” occur:

1. the wrong surgical procedure is performed on a patient;
2. surgical or invasive procedures are performed on the wrong body part; or
3. surgical or invasive procedures are performed on the wrong patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1205#073

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Never Events (LAC 50:V.5113)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.5113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 2702 of the Patient Protection and Affordable Care Act (ACA) of 2010 directed the Secretary of the U.S. Department of Health and Human Services (DHHS) to establish Medicaid regulations which prohibit federal

payments to states for any amounts expended for providing medical assistance for healthcare-acquired conditions and never events. In June 2011, the DHHS, Centers for Medicare and Medicaid Services (CMS) implemented the requirements of §2702.

In compliance with §2702 of ACA, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the provisions governing outpatient hospital services to prohibit Medicaid reimbursement for erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental to the health and safety of the patient. This includes procedures and events that should never happen in a medical setting, commonly known as “never events”. This action is being taken to promote the health and welfare of Medicaid recipients who rely on outpatient hospital services. It is anticipated that implementation of this Emergency Rule will result in programmatic savings to the state; however, the amount of savings is indeterminable for state fiscal year 2012-2013.

Effective July 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing outpatient hospital services to prohibit Medicaid reimbursement for the performance of erroneous medical procedures and never events.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 51. General Provisions

§5113. Never Events

A. Effective for dates of service on or after July 1, 2012, the Medicaid Program will not provide reimbursement for outpatient hospital services for “never events” or medical procedures performed in error which are preventable and have a serious, adverse impact to the health of the Medicaid recipient. Reimbursement will not be provided when the following “never events” occur:

1. the wrong surgical procedure is performed on a patient;
2. surgical or invasive procedures are performed on the wrong body part; or
3. surgical or invasive procedures are performed on the wrong patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Alternative Fuel Credit (LAC 61:I.1913)

The Louisiana Department of Revenue has decided to exercise Emergency Rule promulgation provisions in accordance with R.S. 49:953(B) of the Administrative Procedure Act and its authority under R.S. 47:1511, 1514, 103(D), to adopt a rule to administer the tax credit for conversion of vehicles to alternative fuel usage as provided under R.S. 47:6035.

In keeping with the evolution of science, technology and a global-push for the burning of clean energy, Louisiana has sought to provide an incentive to individual and corporation taxpayers to invest in qualified clean-burning motor vehicle fuel property. In recent years, the number of income tax returns filed with the Department claiming the alternative fuel tax credit has rapidly increased. As a result of increased filings and the number of questions and concerns surrounding the credit, the Department has determined emergency action is necessary to clarify the existing statute and to provide guidance as to the availability and proper qualification criteria necessary to claim the credit on income tax returns filed with the Department.

The action is further necessary to assist taxpayers in avoiding tax deficiencies, late filing penalties and other related penalties that may occur as a result of scenarios in which a taxpayer improperly claims the credit thereby causing the Department’s disallowance of such. This Emergency Rule becomes effective on April 30, 2012 and shall remain in effect for a period of 180 days or until this rule takes effect through the normal promulgation process, whichever comes first.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administrative by the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions Returns

§1913. Alternative Fuel Tax Credit

A. The tax credit afforded under this Section provides an incentive to individuals or corporations to invest in equipment necessary for a motor vehicle to operate on alternative fuel. The tax credit provided under this section is limited to qualified clean-burning motor vehicle fuel property and does not include the cost of equipment necessary to operate a motor vehicle on gasoline or diesel.

B. The Alternative Fuel Tax Credit is available for the cost of the equipment purchased to convert a gasoline or diesel motor vehicle to a vehicle that operates on alternative fuel. The credit is also available when a taxpayer purchases a vehicle that its original and only use is to operate on an alternative fuel.

C. As used in this Section, the following words and phrases shall have the meaning ascribed to them in this Subsection unless the context clearly indicates otherwise.

1. *Alternative Fuel*—a fuel which results in emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates, or any combination of these which are comparably lower than emissions from gasoline or diesel and which meets or exceeds federal clean air standards, including but not limited to compressed natural gas, liquefied natural gas, liquefied petroleum gas, biofuel, biodiesel, methanol, ethanol, and electricity.

a. There shall be a rebuttable presumption that a vehicle which operates on an alternative fuel and listed by the United States Department of Energy at www.afdc.energy.gov/afdc/pdfs/my2012_afv_atv.pdf or the attached exhibit “A” is an alternative fuel vehicle that emits comparably lower emissions than those emitted by gasoline or diesel and a vehicle that meets or exceeds the federal clean air standards as set forth by the United States Environmental Protection Agency.

2. “Cost of qualified clean-burning motor vehicle fuel property” shall mean any of the following.

a. The retail cost paid by the owner of a motor vehicle for the purchase and installation by a technician of qualified clean-burning motor vehicle fuel property certified by the United States Environmental Protection Agency to modify a motor vehicle which is propelled by gasoline or diesel so that the motor vehicle may be propelled by an alternative fuel, provided the motor vehicle is registered in this state.

b. The cost to the owner of a new motor vehicle purchased at retail originally equipped to be propelled by an alternative fuel for the cost of that portion of the motor vehicle which is attributable to the storage of the alternative fuel, the delivery of the alternative fuel to the engine of the motor vehicle, and the exhaust of gases from combustion of the alternative fuel, provided the motor vehicle is registered in this state.

c. The cost of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, including compression equipment, storage tanks, and dispensing units for alternative fuel at the point where the fuel is delivered, provided the property is installed and located in this state and no credit has been previously claimed on the cost of such property. The cost of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel shall not include costs associated with exploration and development activities necessary for severing natural resources from the soil or ground.

3. “Qualified clean-burning motor vehicle fuel property” shall mean equipment necessary for a motor vehicle to operate on an alternative fuel and shall not include equipment necessary for operation of a motor vehicle on gasoline or diesel.

D. The credit is allowed for the taxable period in which the taxpayer incurs the retail cost of the property that is purchased and installed. In these instances, the credit is equal to 50 percent of the cost of the equipment necessary to operate a vehicle on an alternative fuel. To claim the retail cost paid by the owner of a motor vehicle for the purchase

and installation of the equipment as a credit, the taxpayer must provide information which shows:

1. the installation was by a technician of qualified clean-burning motor vehicle fuel property certified by the United States Environmental Protection Agency to modify a motor vehicle which is propelled by gasoline or diesel so that the motor vehicle may be propelled by an alternative fuel; and

2. the motor vehicle is registered in this state.

a. For purposes of the credit, *retail cost* shall be defined as the sales price paid by a taxpayer for the purchase of qualified clean-burning motor vehicle fuel property sold at retail. *Sales price* means the total amount for which qualified clean-burning motor vehicle fuel property is sold. The term *sales price* shall not include any amount designated as a cash discount or rebate by the vendor or manufacturer. *Rebate* means any amount offered by a vendor or manufacturer as a deduction from the listed retail price.

E. The credit is also allowed for the taxable period in which a taxpayer incurs the cost of the property which is directly related to the delivery of an alternative fuel into the fuel tank of a motor vehicle propelled by alternative fuel. In these instances, the credit is also equal to 50 percent of the cost of the property described in the preceding sentence. The costs include those incurred for:

1. compression equipment, storage tanks, and dispensing units for alternative fuel at the point where the fuel is delivered; and

2. the property must be installed and located in this state.

a. However, if a taxpayer has previously claimed credits on the cost of the property listed above, no additional credits can be claimed. Also, under this provision, the following costs cannot be included when claiming the credit:

i. installation costs; or

ii. any costs associated with exploration and development activities necessary for severing natural resources from the soil or ground.

F. In cases where no previous credit was claimed under Subsections D and E, a taxpayer can claim a credit for a new motor vehicle purchased with equipment necessary to operate a vehicle on an alternative fuel pre-installed by the vehicle's manufacturer. Basic requirements to claim the credit under this provision include:

1. the credit must be claimed during the tax period in which the property was purchased; and

2. the motor vehicle must be registered in this state.

a. Once the basic requirements are met, to claim the credit, the taxpayer can elect to determine the exact cost of the qualified clean-burning motor vehicle fuel property pre-installed by the manufacturer in the purchased vehicle. The cost of the qualified clean-burning motor vehicle fuel property for a new motor vehicle originally equipped to be propelled by an alternative fuel shall be the cost of that portion of the motor vehicle which is attributable to any of the following:

i. the storage of the alternative fuel;

ii. the delivery of the alternative fuel to the engine of the motor vehicle; and

iii. the exhaust of gases from combustion of the alternative fuel.

b. If the taxpayer is unable to or elects not to determine the exact cost of the qualified clean-burning motor vehicle property pre-installed by the manufacturer in the purchased vehicle, the taxpayer can claim a credit that is the lesser of:

- i. 10 percent of the cost of the motor vehicle; or
- ii. \$3,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1514, and 103(D).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 38:

Cynthia Bridges
Secretary

1205#012

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Partial Opening of Shrimp Season in State Outside Waters

In accordance with the emergency provisions of R.S. 49:953 and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close outside waters by zone each year as it deems appropriate upon inspection of and based upon technical and biological data which indicates that marketable shrimp, in sufficient quantities, are available for harvest, and a Declaration of Emergency adopted by the Wildlife and Fisheries Commission on December 1, 2011 which authorizes the secretary of the Department of Wildlife and Fisheries to reopen any area closed to shrimping when the closure is no longer necessary, the secretary hereby declares:

That state outside waters from the U.S. Coast Guard navigational light off the northwest shore of Caillou Boca at 29 degrees 03 minutes 10 seconds north latitude and 90 degrees 50 minutes 27 seconds west longitude westward to the eastern shore of the Atchafalaya River Ship Channel at Eugene Island as delineated by the channel red buoy line shall reopen to shrimping at 6:00 am April 14, 2012.

Recent biological samples taken by Office of Fisheries biologists indicate that small white shrimp which have overwintered in these waters from December through the present time have reached marketable sizes and the closure is no longer necessary. Significant numbers of smaller white shrimp still remain in state outside waters west of the Atchafalaya River Ship Channel to the western shore of Freshwater Bayou Canal at 92 degrees 18 minutes 33 seconds west longitude, and this area will remain closed to shrimping until further notice.

Robert J. Barham
Secretary

1205#001

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Recreational and Commercial Fisheries Closure

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Wildlife and Fisheries Commission hereby closes all commercial fishing, effective immediately May 3, 2012 in the following areas:

Those waters north of 28 degrees 56 minutes 30 seconds north latitude and south of 28 degrees 59 minutes 30 seconds north latitude from the eastern shore of Southwest Pass of the Mississippi River eastward to a line beginning at 28 degrees 59 minutes 30 seconds north latitude and 89 degrees 19 minutes 50 seconds west longitude and ending at 28 degrees 56 minutes 30 seconds north latitude and 89 degrees 23 minutes 00 seconds west longitude, and those waters north of 29 degrees 02 minutes 00 seconds north latitude and south of 29 degrees 02 minutes 20 seconds north latitude from the western shore of South Pass of the Mississippi River westward to 89 degrees 15 minutes 25 seconds west longitude, and those waters north of 28 degrees 59 minutes 40 seconds north latitude and south of 29 degrees 02 minutes 00 seconds north latitude from the western shore of South Pass of the Mississippi River westward to 89 degrees 15 minutes 25 seconds west longitude and southeastward along a line beginning at 29 degrees 02 minutes 00 seconds north latitude and 89 degrees 15 minutes 25 seconds west longitude and ending at 28 degrees 59 minutes 40 seconds north latitude and 89 degrees 10 minutes 15 seconds west longitude, and those waters west of the western shore of South Pass of the Mississippi River south of 28 degrees 59 minutes 40 seconds north latitude bounded by the following coordinates: 1) 28 degrees 59 minutes 15 seconds north latitude and 89 degrees 08 minutes 15 seconds west longitude, 2) 28 degrees 58 minutes 20 seconds north latitude and 89 degrees 10 minutes 00 seconds west longitude, 3) 28 degrees 59 minutes 01 seconds north latitude and 89 degrees 11 minutes 00 seconds west longitude, 4) 28 degrees 59 minutes 40 seconds north latitude and 89 degrees 10 minutes 15 seconds west longitude, and those waters east of the eastern shore of South Pass of the Mississippi River and south of 29 degrees 01 minutes 50 seconds north latitude eastward to a line beginning at 29 degrees 01 minutes 50 seconds north latitude and 89 degrees 07 minutes 20 seconds west longitude and ending at 28 degrees 59 minutes 35 seconds north latitude and 89 degrees 08 minutes 00 seconds west longitude, and those waters adjacent to but not including Northeast Pass and Southeast Pass of the Mississippi River and bounded by the following coordinates: 1) 29 degrees 08 minutes 35 seconds north latitude and 89 degrees 04 minutes 20 seconds west longitude, 2) 29 degrees 08 minutes 15 seconds north latitude and 89 degrees 02 minutes 10 seconds west longitude, 3) 29 degrees 04 minutes 50 seconds north latitude and 89 degrees 04 minutes 10 seconds west

longitude, 4) 29 degrees 05 minutes 30 seconds north latitude and 89 degrees 05 minutes 10 seconds west longitude, and those waters south and west of Pass a Loure of the Mississippi River and east of 89 degrees 05 minutes 35 seconds west longitude bounded by the following coordinates: 1) 29 degrees 11 minutes 25 seconds north latitude and 89 degrees 03 minutes 30 seconds west longitude, 2) 29 degrees 11 minutes 00 seconds north latitude and 89 degrees 02 minutes 25 seconds west longitude, 3) 29 degrees 09 minutes 00 seconds north latitude and 89 degrees 05 minutes 35 seconds west longitude, 4) 29 degrees 11 minutes 00 seconds north latitude and 89 degrees 05 minutes 35 seconds west longitude, and those waters south of North Pass of the Mississippi River bounded by the following coordinates: 1) 29 degrees 11 minutes 35 seconds north latitude and 89 degrees 02 minutes 55 seconds west longitude, 2) 29 degrees 12 minutes 35 seconds north latitude and 89 degrees 01 minutes 05 seconds west longitude, 3) 29 degrees 11 minutes 35 seconds north latitude and 89 degrees 01 minutes 10 seconds west longitude, 4) 29 degrees 11 minutes 10 seconds north latitude and 89 degrees 02 minutes 00 seconds west longitude, and those state inside and outside waters adjacent to Grand Terre Island bounded by the following coordinates: 1) 29 degrees 18 minutes 20 seconds north latitude and 89 degrees 54 minutes 50 seconds west longitude, 2) 29 degrees 17 minutes 10 seconds north latitude and 89 degrees 53 minutes 50 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 00 seconds north latitude and 89 degrees 57 minutes 20 seconds west longitude, and those state inside waters in the upper Barataria Basin north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 29 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to 89 degrees 57 minutes 00 seconds west longitude.

Recreational fishing is open in all state inside and outside territorial waters, except in the following areas, where only recreational angling and charter boat angling is allowed: those state inside and outside waters adjacent to Grand Terre Island bounded by the following coordinates: 1) 29 degrees 18 minutes 20 seconds north latitude and 89 degrees 54 minutes 50 seconds west longitude, 2) 29 degrees 17 minutes 10 seconds north latitude and 89 degrees 53 minutes 50 seconds west longitude, 3) 29 degrees 15 minutes 40 seconds north latitude and 89 degrees 56 minutes 00 seconds west longitude, 4) 29 degrees 17 minutes 00 seconds north latitude and 89 degrees 57 minutes 20 seconds west longitude, and those state inside waters in the upper Barataria Basin north of 29 degrees 26 minutes 00 seconds north latitude and south of 29 degrees 29 minutes 00 seconds north latitude from 89 degrees 50 minutes 00 seconds west longitude westward to 89 degrees 57 minutes 00 seconds west longitude.

The Deepwater Horizon drilling rig accident has resulted in a significant release of hydrocarbon pollutants into the waters offshore of southeast Louisiana and these pollutants have the potential to impact fish and other aquatic life in portions of these coastal waters. Efforts have been made and are continuing to be made to minimize the potential threats to fish and other aquatic life.

The commission hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to open, close, reopen-reclose, broaden or otherwise modify the areas closed and opened to fishing if biological, environmental and technical data indicate the need to do so, or as needed to effectively implement the provisions herein upon notification to the Chair of the Wildlife and Fisheries Commission.

Ann L. Taylor
Chairman

1205#020

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Spring Inshore Shrimp Season Opening Dates

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters, the Wildlife and Fisheries Commission does hereby set the 2012 Spring Shrimp Season in Louisiana state waters to open as follows:

That portion of state inside waters from the Mississippi/Louisiana state line to the eastern shore of South Pass of the Mississippi River to open at 6:00 am May 21, 2012, and

That portion of state inside waters from the eastern shore of South Pass of the Mississippi River to the Atchafalaya River Ship Channel at Eugene Island as delineated by the River Channel Buoy Line to open at 6:00 am May 7, 2012, and

That portion of state inside waters from the Atchafalaya River Ship Channel at Eugene Island as delineated by the River Channel Buoy Line to the Louisiana/Texas state line, to open at 6:00 am May 21, 2012, and

That portion of state outside waters south of the inside/outside shrimp line as described in R.S. 56:495 from the Atchafalaya River Ship Channel at Eugene Island as delineated by the River Channel Buoy Line to the western shore of Freshwater Bayou at 92 degrees 18 minutes 33 seconds west longitude to open at 6:00 am May 21, 2012.

The Commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to close any portion of Louisiana's inside waters to protect small juvenile white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop. The Secretary is further granted the authority to open any area, or re-open any previously closed area, and to open and close special shrimp seasons in any portion of state inside waters based upon biological and technical data following notification to the Chair of the Wildlife and Fisheries Commission.

Ann L. Taylor
Chairman

1205#021

Rules

RULE

Department of Children and Family Services Division of Programs Licensing Section

Child Safety Alarm (LAC 67.III.7331 and 7363)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section in accordance with provisions of the Administrative Procedure Act, R.S. 49:953(A) has amended LAC 67:III, Subpart 21, Chapter 73 Day Care Centers, Subchapter A, Licensing Class "A" Regulations for Child Care Centers and Subchapter B, Licensing Class "B" Regulations for Child Care Centers.

In accordance with R.S. 32:295.3.1, the department found it necessary to amend Subpart 21, Section 7331 General Transportation and Section 7363 Transportation, to provide guidelines for child day care providers who elect to install a child safety alarm in any vehicle that is owned or operated by the day care center, its owner, operator, or employees and used to transport children to or from the day care center. The vehicle must have a seating capacity of six or more passengers in addition to the driver. The regulations require that the child safety alarm is an ignition-based alarm system that voice prompts the driver to inspect the vehicle for children before exiting the vehicle.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter A. Licensing Class "A" Regulations for Child Care Centers

§7331. General Transportation (Contract, Center- Provided, Parent Provided)

A. - L. ...

M. In accordance with R.S. 32:295.3.1, a provider may have a child safety alarm installed in any vehicle that has a seating capacity of six or more passengers in addition to the driver. This vehicle has to be owned or operated by the day care center, its owner, operator, or employees and used to transport children to or from the day care center. The child safety alarm is an ignition-based alarm system that voice prompts the driver to inspect the vehicle for children before exiting the vehicle and shall be installed by a person or business that is approved by the manufacturer of the child safety alarm. An owner or director of a day care center who elects to have a child safety alarm installed in a vehicle owned or operated by the day care center shall ensure that the child safety alarm is properly maintained and in good working order each time the vehicle is used for transporting children to or from a day care center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by

the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1119 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2767 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1207 (May 2012).

Subchapter B. Licensing Class "B" Regulations for Child Care Centers

§7363. Transportation

A. - E. ...

F. In accordance with R.S. 32:295.3.1, a provider may have a child safety alarm installed in any vehicle that has a seating capacity of six or more passengers in addition to the driver. This vehicle has to be owned or operated by the day care center, its owner, operator, or employees and used to transport children to or from the day care center. The child safety alarm is an ignition-based alarm system that voice prompts the driver to inspect the vehicle for children before exiting the vehicle and shall be installed by a person or business that is approved by the manufacturer of the child safety alarm. An owner or director of a day care center who elects to have a child safety alarm installed in a vehicle owned or operated by the day care center shall ensure that the child safety alarm is properly maintained and in good working order each time the vehicle is used for transporting children to or from a day care center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 26:1638 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2773 (December 2007), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1207 (May 2012).

Ruth Johnson
Secretary

1205#047

RULE

Department of Civil Service Board of Ethics

Late Filings (LAC 52:I.Chapter 12)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has adopted rules for late filing procedures.

Title 52 ETHICS

Part I. Board of Ethics

Chapter 12. Late Filings

§1201. Late Filing; Notice of Delinquency

A. The staff shall mail, by certified mail, a notice of delinquency within four business days after the due date for any report or statement, of which the staff knows or has

reason to know is due by the filer that is due under any law within the board's jurisdiction which has not been timely filed.

B. If the date on which a report is required to be filed occurs on a weekend or federal or state holiday, the report shall be filed no later than the first working day after the date it would otherwise be due that is not a federal or state holiday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1207 (May 2012).

§1203. Late Filing; Assessment of Late Fee

A. The staff of the board shall automatically assess and order the payment of late filing fees for any failure to timely file any report or statement due under any law within the board's jurisdiction in accordance with the law on the assessment of late fees.

B. The assessment and order of the late fee shall be mailed by certified mail to the late filer. If the assessment and order is not claimed by the late filer, the assessment and order shall be served on the late filer via a subpoena of notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1208 (May 2012).

§1205. Late Filing

A. Definitions. For purposes of §1205, the following definitions shall apply.

Amount of Activity—the total amount of receipts or expenditures, whichever is greater.

Person Regularly Responsible—the person designated by the person required to file a report, in accordance with any law under the jurisdiction of the board, who is responsible for keeping the records and filing the reports on behalf of the required filer.

B. An automatic late fee shall not be assessed, and if one is assessed shall be rescinded by the staff, if the person required to file the report did not file the report for any of the following reasons which occurred on the due date or during the seven days prior to the date the report was due:

1. death of the person required to file or the person regularly responsible, or a death in their immediate family, as defined in R.S.42:1102(13);

2. serious medical condition, in the considered judgment of the staff, which prevented the person required to file or the person regularly responsible from filing the report timely;

3. a natural disaster, an act of God, force majeure, a catastrophe, or such other similar occurrence.

C. If a report is filed more than 10 days late and the amount of activity on the report is less than the amount of the late fee to be assessed, the staff may reduce the late fee to the amount of activity or 10 times the per day penalty, whichever is greater.

D. An automatic late fee shall not be assessed, and if one is assessed, shall be rescinded by the staff, if the candidate officially withdrew with the Secretary of State from the election and received no contributions or loans and/or made any expenditures, excluding his qualifying fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1208 (May 2012).

§1207. Late Filing; Waiver

A. Any person assessed with automatic late filing fees may request a waiver of the late fee, in writing, to the board within 20 days after the receipt of the assessment requiring the payment of late filing fees, setting forth the facts which tend to prove that the late filer had good cause for filing late.

B. The executive secretary shall place all such requests for a waiver on the board's agenda for consideration. If a late filer requests to make an appearance, the executive secretary shall schedule the appearance.

C. At the time of submission of his request for a waiver, the late filer shall submit all information and documentation to support his request.

D. If the board affirms the order assessing the late fee, notice shall be mailed by regular mail to the late filer, notifying him that the order was affirmed.

E. If the board waives or alters in any way the assessment of the late fee after consideration of a waiver request, a new order shall be issued by the staff consistent with the decision of the board after consideration of the waiver request. The new order shall be sent to late filer in the same manner as the original order as set forth in §1203.B.

F. Within 30 days of mailing of the notice of the board's decision on the waiver request, the late filer may

1. seek reconsideration of the board's decision only upon submission of information not provided or available to the board during its initial consideration of the matter; or,

2. appeal the board's decision to the Ethics Adjudicatory Board pursuant to §1209.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1208 (May 2012).

§1209. Late Filing; Appeal

A. Any person ordered to pay late filing fees pursuant to §1203 may appeal the order to the Ethics Adjudicatory Board.

B. Notice of the person's intent to appeal should be submitted in writing to the executive secretary of the board within 20 days of the receipt of the order.

C. If a person submits a waiver request pursuant to §1207, the notice of intent to file an appeal should be submitted to the executive secretary of the board within 30 days of the mailing of the board's decision with respect to the waiver request.

D. The notice of intent to appeal shall include all grounds for which the late filer is seeking an appeal, along with any documentation and evidence to be considered by the Ethics Adjudicatory Board.

E. The executive secretary shall forward the notice of appeal, along with the order assessing the late fee and any correspondence concerning the assessment of the late fee to the Ethics Adjudicatory Board. The notice from the executive secretary shall include the name of the attorney for the board and contact information for the late filer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1208 (May 2012).

Kathleen M. Allen
Ethics Administrator

1205#028

RULE

Department of Civil Service Board of Ethics

Third Party Ethics Training (LAC 52:I.Chapter 24)

The Department of Civil Service, Board of Ethics, in accordance with R.S. 42:1134(A) and with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has adopted new regulations for Third Party Ethics Training, pursuant to HCR 91 of the 2011 Regular Legislative Session.

Title 52 ETHICS

Part I. Board of Ethics

Chapter 24. Third Party Ethics Training

§2401. In General

A. It is of primary importance to the public that each public servant in the state of Louisiana undergoes education and training on the Code of Governmental Ethics during each year of his term of public employment or term in office, as the case may be, in accordance with R.S. 42:1170. These rules establish the procedure to certify persons and programs to deliver education regarding the laws within the jurisdiction of the Board of Ethics (board) to public servants required to receive education regarding those laws. These rules do not apply to persons who are employed by the ethics administration program.

B. State agency ethics liaisons designated pursuant to R.S. 42:1170(C)(2) are certified trainers and not required to comply with §2405.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1209 (May 2012).

§2403. Definitions

A. For purposes of Chapter 24 of these Rules, the following definitions apply.

Additional Material—public servant ethics training material which has not yet been approved by the Board of Ethics for presentations. Such material requires board approval prior to being presented to public servants.

Certified Trainer—any person who is approved to educate and train the state's public servants on the Code of Governmental Ethics and who is not an employee of the Board of Ethics.

Liaison—the person designated by each agency head to provide all public servants of that agency information and instruction relative to ethics and conflicts of interest.

Preapproved Training Material—public servant ethics training materials that do not require approval from the Board of Ethics in order for the certified trainer to present the material to public servants.

Proctor—a person who does not teach a public servant ethics training program, but administers the training by recorded presentation, which may include, but is not limited

to, a DVD or electronic presentation requiring computer software provided by the Board of Ethics.

Program—a specific session of public servant ethics training.

Public Servant Ethics Training—the mandatory one hour of ethics training that all public servants in the State of Louisiana are required to attend annually pursuant to R.S. 42:1170(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1209 (May 2012).

§2405. Certification of Trainers

A. In order for an applicant to be an approved certified trainer, he must meet the following requirements.

1. Required Training. Certified trainer applicants are required to undergo a minimum of four hours of training within the past three years that can be verified with attendance records maintained by the ethics administration program prior to submitting an application seeking certified trainer status. Courses that may count toward an applicant's four hour training requirement include:

a. two hour training course(s) developed for liaisons pursuant to R.S. 42:1170(C);

b. public servant ethics training offered by an employee of the ethics administration program or any other trainer who has been previously certified to deliver public servant ethics training programs by the ethics administration program; or

c. public servant ethics training offered via the Board of Ethics website; however, no more than one hour will count toward an applicant's four hour training requirement.

2. Application Submission. All persons who seek approval as a certified trainer to deliver a public servant ethics training program must submit an application for trainer certification following the completion of the required training pursuant to Subsection A of this Section. The application can be found on the board's website.

3. Ongoing Training. A certified trainer who wishes to maintain certified status in subsequent years is required to undergo two hours of continuing education within 90 days of the beginning of each calendar year; this requirement can be met through attendance at any of the courses enumerated in Subsection A of this Section. A certified trainer who does not undergo his two hour continuing education training course to maintain his certified status will be required to attend four hours of training and submit an application for trainer certification, which must be approved by the ethics administrator, or his designee, to renew his certified trainer status.

B. Certified trainer applicants must not have been found to have been in violation of any of the laws within The Code of Governmental Ethics, R.S. 42:1101 et seq., prior to submission of an application for trainer certification unless approval has been obtained by the board in accordance with Section 2405.B.3.

1. Subsection B does not include persons who have been subject to a per day late fee pursuant to the laws under the jurisdiction of the board, if said fee has been paid.

2. Subsection B does not apply to any persons who have been found in violation of any other laws under the board's supervision or jurisdiction including, but not limited

to, the Campaign Finance Disclosure Act, R.S. 18:1481 et seq., or the Lobbyist Disclosure Acts, R.S. 24:50 et seq., R.S. 49:71 et seq., and R.S. 33:9661 et seq.

3. A person who has been found in violation of the Code of Governmental Ethics, as set forth in Subsection B, may seek approval from the board to become a certified trainer three years from the date the decision finding the violation is final.

C. Certified trainer applicants who are licensed to practice law may not be approved if currently representing a client in connection with an ongoing investigation, if representing a client in a matter in which charges have been filed by the board, or if an attorney of record in a civil lawsuit in which the board is named as an opposing party.

1. Subsection C shall not prohibit an attorney from becoming a certified trainer if he is representing a client in relation to an advisory opinion request before the board.

2. Subsection C shall only be read to apply to the individual attorney and shall not be read to be imputed upon an attorney's firm.

D. Only upon approval by the ethics administrator, or his designee, will an applicant become a certified trainer. The ethics administrator, or his designee, retains the right to refuse approval of applicants, or suspend or revoke the status of certified trainers as set forth in §2413.H, who do not comply with the requirements or standards of these rules. A person not approved as a certified trainer under this Section may appeal the decision of the ethics administrator, or his designee, to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1209 (May 2012).

§2407. Training and Education Materials

A. Certified trainers are required to use training and education materials approved by the ethics administration program.

B. Access to preapproved training materials will be made available to trainers pending completion of training requirements set forth in §2405 and upon trainer certification.

C. Additional material may be used by certified trainers if the material has been approved by the ethics administrator, or his designee, pursuant to the standards and expectations set out in §2409.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1210 (May 2012).

§2409. Standards and Expectations for Approval; Additional Material

A. Application for Approval. Certified trainers who wish to utilize material that has not been preapproved by the board must submit an application for approval of material for public servant ethics training to the Board of Ethics with a copy of the materials for the proposed program.

B. Process. The ethics administration program will evaluate the application and material pursuant to the standards and expectations in Subsection C of this Section. An application for such program and materials must be submitted to the board at least 60 days in advance of the program.

C. Standards and Expectations. The following standards will govern the approval of materials by the board.

1. The materials for the program must have significant intellectual or practical content, and its primary objective must be to maintain or increase the public servant's awareness of the ethical standards set forth in the code of governmental ethics.

2. Materials submitted with the application shall include a copy of high quality and carefully prepared materials that shall be given to all public servants at the program. Materials submitted may include written material to be distributed to participants as well as videos, slideshows or other electronic media.

D. Additional Material. Materials that have been approved by the ethics administration program for use in a public servant ethics training program are valid for the remainder of the calendar year and are not required to undergo an approval process until the following year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1210 (May 2012).

§2411. Notification of Ethics Training Program

A. Prior to conducting a public servant ethics training program, a certified trainer must notify the ethics administration program and request approval of the session. An application for public servant ethics training program can be found on the board's website and shall be submitted to the ethics administration program electronically for approval.

B. Preapproved Training Material. A certified trainer must submit an Application for public servant ethics training program to the Board of Ethics at least 15 days prior to the program if the material to be used in the presentation is preapproved training material.

C. Additional Material. A certified trainer must submit an application for public servant ethics training program in conjunction with an application for approval of material for public servant ethics training pursuant to §2409 at least 60 days prior to the program if the material to be used in the presentation is not preapproved training material. An application for approval of material for public servant ethics training need not be submitted if the material to be used has already been approved pursuant to §2409.D for the calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1210 (May 2012).

§2413. Ethics Training Program Requirements

A. Programs must be a minimum of one hour in order for the public servant to receive credit for his public servant ethics training, and the public servant must be present during the entirety of the presentation.

B. The program must be offered by a certified trainer.

C. The costs of the program, if any, to the attending public servant must be reasonable considering the subject matter, level of instruction, supporting documentation, and educational material.

D. No examination or testing shall be required at any public servant ethics training program, unless for the sole purpose of attendance verification.

E. The program must be conducted in a physical setting conducive to learning at a time and place free of interruptions.

F. The certified trainer of an approved public servant ethics training program must announce or indicate as follows:

1. This course has been approved by the Louisiana Board of Ethics to meet the ethics training requirement pursuant to R.S. 42:1170. The person delivering this program is not employed by the Board of Ethics, and any advice given is informational in nature. No opinions given are those of the Board of Ethics. If you have any questions regarding this program or the Code of Governmental Ethics, do not hesitate to contact the board with your inquiry.

G. At the conclusion of an approved program, each attending public servant must be given the opportunity to complete an evaluation questionnaire addressing the quality, effectiveness, and usefulness of the particular program. Within 30 days of the conclusion of the program, a summary of the results of the questionnaires must be forwarded to the board. If requested, copies of the questionnaires must also be forwarded to the board. Certified trainers must maintain the questionnaires for one year following a program, pending a board request for their submission.

H. To ensure all requirements are met in accordance with this Chapter, the board or its staff may at any time evaluate a program and suspend approval of it. The board and its staff may also at any time evaluate a trainer and suspend or revoke his status as a certified trainer. The certified trainer will be given written reasons for suspension or revocation and an opportunity to appear before the board at its next regularly scheduled monthly meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1210 (May 2012).

§2415. Public Servant Attendance Information and Submission; Certified Trainers

A. Each public servant shall complete a public servant ethics training attendance form while in attendance at a certified program.

B. Attendance forms will be provided by the certified trainer.

C. Attendance forms shall include an area for the attendee's name, date of birth, agency, signature, course number, and certified trainer name and shall include a clause that states:

1. Your signature on this attendance form is your attestation that you attended the entire program and that you are the person whose identity this form declares. You understand that evidence brought to the attention of the Board of Ethics to the contrary may result in disciplinary action from the board for failure to comply with R.S. 42:1170.

D. The public servant must complete a form while in attendance and leave the form with the certified trainer to be filed and stored by the trainer for a minimum of four years; in the event a request is ever made by the board to view the forms by the board for the purposes of an audit, hearing, investigation, or any other purposes the board deems necessary and proper.

E. The certified trainer shall submit a certification of attendance to the board of Ethics within 30 days after the

date of the program. The submission shall be made electronically on the board's website, and shall include the course number, certified trainer's name, the date of the program, and a list of the attendees with each public servant's date of birth and agency.

F. Attendance forms, or any other certification of attendance, will not be accepted by the Board of Ethics from an individual public servant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1211 (May 2012).

§2417. Ethics Liaisons; Proctors

A. A state agency ethics liaison may deliver information, as a proctor, to the public servants in his agency regarding the education and training required pursuant to R.S. 42:1170.A of the code of governmental ethics, provided the liaison has the training required by R.S. 42:1170.C.

B. A political subdivision ethics liaison may deliver information, as a proctor, to the public servants under his agency's supervision or jurisdiction regarding the education and training required pursuant to R.S. 42:1170.A of the code of governmental ethics, provided the liaison has been designated by his agency head and the liaison has attended a minimum of two hours of education and training designed for such persons or for persons set out in R.S. 42:1170.C regarding the provisions of the code of governmental ethics. In addition, each liaison shall be required to have at least two hours of ethics education and training annually.

1. A *political subdivision*, for purposes of this Section, is defined by R.S. 42:1102(17) as any unit of local government, including a special district, authorized by law to perform governmental functions.

C. If a request is made to the Board of Ethics, the board will provide the proctor, as defined in Subsections A and B access to a recorded presentation regarding the Code of Governmental Ethics, which may include, but is not limited to, a DVD or other presentation through the use of computer software.

D. In order for the public servant to receive credit for his public servant ethics training, the recorded presentation must be a minimum of one hour, and the public servant must be present for the entirety of the presentation.

E. Proctors for a public servant ethics training program shall announce or indicate as follows, prior to beginning the presentation.

1. This course has been approved by the Louisiana Board of Ethics to meet the ethics training requirement pursuant to R.S. 42:1170. The person delivering this program is not employed by the Board of Ethics, and any advice given is informational in nature. No opinions given are those of the Board of Ethics. If you have any questions regarding this program or the Code of Governmental Ethics, do not hesitate to contact the board with your inquiry.

F. Proctors must adhere to the following when submitting information to the Ethics Administration Program regarding the public servants in their agency.

1. Each public servant shall complete a public servant ethics training attendance form while in attendance at a recorded presentation by the proctor.

2. Attendance forms will be provided by the proctor.

3. Attendance forms shall include an area for the attendees' name, date of birth, agency, signature, course

number, and proctor name and shall also include a clause that states:

Your signature on this attendance form is your attestation that you attended the entire presentation and that you are the person whose identity this form declares. You understand that evidence brought to the attention of the Board of Ethics to the contrary may result in disciplinary action from the board for failure to comply with R.S. 42:1170.

4. The public servant must complete a form while in attendance and leave the form with the proctor to be filed and stored by the agency for a minimum of four years; in the event a request is ever made by the board to view the forms by the board for the purposes of an audit, hearing, investigation, or any other purposes the board deems necessary and proper.

5. The proctor shall submit information regarding the attendees to the Board of Ethics within 30 days after the date of the program. The submission shall be made electronically on the board’s website, and shall include the course number, proctor’s name, the date of the program, and a list of the attendees with each public servant’s date of birth and agency.

6. Attendance forms, or any other certification of attendance, will not be accepted by the Board of Ethics from an individual public servant.

G. Proctors are required to be present for the entirety of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 38:1211 (May 2012).

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1205#029

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School,
District, and State Accountability System
(LAC 28:LXXXIII.409, 515, 707, 3501, 3503, and 3507)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 111—The Louisiana School, District, and State Accountability System*: §409. Calculating a 9-12 Assessment Index, §515. State Assessments and Accountability, §707. Safe Harbor, §3501. Alternative Schools, §3503. Pre-GED/Skills Option Students, and §3507. Option Considerations. The changes in Bulletin 111, Chapters 4, 5, and 7, provide detail for removing policy related to Graduation Exit Examination as part of the school performance score. The changes in Bulletin 111, Chapter 35, provide detail to define alternative schools and alternative programs. Proposed changes in Bulletin 111, Chapter 35, provide detail relative to removing policy related to the discontinued Pre-Graduation Exit Examination /Skills Option Program. Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and

communities focus on improved student achievement. The state’s accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations.

**Title 28
EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School,
District, and State Accountability System
Chapter 4. Assessment, Attendance, and Dropout
Index Calculations**

§409. Calculating a 9-12 Assessment Index

A. All operational end-of-course (EOC) tests will be used in the calculation of the assessment index.

1. All subjects will be weighted equally.

2. Algebra I EOC passing test scores earned by students at a middle school will be included in the SPS calculations of the high school to which the student transfers. The scores will be included in the accountability cycle that corresponds with the students’ first year of high school. Middle schools will earn incentive points for EOC passing scores the same year in which the test was administered.

3. Algebra I EOC test scores considered “not passing” will not be transferred to the high school. Students will retake the test at the high school, and the first administration of the test at the high school will be used in the calculation of the assessment index the same year in which it was earned.

B. For all EOC assessments a dropout adjustment factor will not be used in the assessment index.

1. For EOC, use the values in the table below.

EOC	
Label	Subject-Test Index Points
Excellent	200
Good	135
Fair	75
Needs Improvement	0

C. All EOC assessment indices will be equally weighted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 33:252 (February 2007), LR 36:1989 (September 2010), LR 38:1212 (May 2012).

Chapter 5. Inclusion in Accountability

§515. State Assessments and Accountability

A. Louisiana students in grades 3 through 8 will participate in at least one of the following state assessments on an annual basis:

1. LEAP; or
2. EOC;
3. iLEAP; or
4. LEAP Alternate Assessment Level 1 (LAA 1); or
5. LEAP Alternate Assessment Level 2 (LAA 2).

a. Some LAA 2 students will participate in a combination of regular assessment (LEAP, iLEAP, EOC) and LAA 2 if the IEP requires this.

b. These students can take only one test in each subject at any single test administration, e.g., LAA 2 in ELA and EOC in mathematics, science, and social studies.

B. For the fall 2010-11 accountability cycle, students in grades 10 and 11 will participate in at least one of the following state assessments on an annual basis:

1. EOC;
2. LEAP Alternate Assessment Level 1 (LAA 1); or
3. LEAP Alternate Assessment Level 2 (LAA 2).

C. - D. ...

E. EOC scores for repeaters (in any subject) shall not be included in high school SPS calculations.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:2422 (October 2005), LR 32:1022 (June 2006), LR 33:253 (February 2007), LR 36:1990 (September 2010), LR 37:2119 (July 2011), LR 38:1212 (May 2012).

Chapter 7. Subgroup Component

§707. Safe Harbor

A - E. ...

F. Beginning in 2006-07 for schools and districts, English language arts and mathematics test results from grades 3-8 and 10 LEAP, iLEAP, LAA 1, and LAA 2 will be used to calculate the reduction of non-proficient students in Safe Harbor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 32:1025 (June 2006), LR 33:253 (February 2007), LR 33:2594 (December 2007), LR 38:1213 (May 2012).

Chapter 35. Inclusion of Alternative Education Schools and Students in Accountability

§3501. Alternative Schools

A. For the purposes of school accountability, alternative schools are those schools that:

1. are located on a separate campus (i.e., a building with a different address) from the students' sending school(s) or have a separate site code;
2. educate some or all students for more than 10 days;
3. are established to meet the specific needs of students with special challenges that require educational environments that are alternatives to the regular classroom;
4. house one or more programs designed to address discipline, dropout prevention and recovery, credit recovery, etc; and
5. do not provide programs for students who are academically advanced, gifted, talented, or pursuing specific areas of study (arts, engineering, medical, technical, etc.).

B. Alternative schools will be classified into two categories:

1. Accountable Alternative School. There are sufficient data, as determined by this bulletin, to calculate a school performance score for all indicators appropriate for school configuration
2. Non-accountable Alternative School. There are insufficient data, as determined by this bulletin, to calculate a statistically reliable school performance score for the school, or less than 25 percent of the students in the school are enrolled for a full academic year *(beginning with the 2011-12 fall accountability release).

a. Test summary reports shall be published annually for every non-accountable alternative school.

C. Alternative Programs

1. For the purposes of school accountability, alternative programs are those programs that:

- a. are not housed on a separate campus;
- b. do not have a site code; and
- c. educate students who attend the school which the program is housed.

2. All assessment data will be assigned to the school which houses the program.

3. Requests to convert a school to a program must be submitted for approval prior to July 1.

D. Beginning with the 2010-11 fall accountability release, the school performance scores and letter grades of accountable alternative schools will be published with other schools.

1. Accountable alternative schools will be clearly labeled as alternative schools in public releases.
2. School performance scores for alternative schools will exclude the assessment data for students who are not full academic year (FAY) enrollees. The assessment data for non-FAY students will be routed back to the sending school.

E. Beginning in 2011-12, assessment for alternative schools will include a new assessment, academic skills assessment (ASA), for students who do not participate in end-of-course tests (EOCT).

1. A system will be used to assign performance levels and points for each level to be used in alternative school accountability for students in GED and skills certificate programs.

GED/Skills Certificate Options Test	Assessment Points
Basic	150
Approaching Basic	75
Unsatisfactory	0

F. Alternative schools with sufficient data shall also be evaluated in the subgroup component in the same manner as are regular schools.

G. School performance scores and subgroup evaluations for alternative school students shall consist of:

1. the assessment data of all eligible FAY student;
2. the attendance data of all enrollees (K-8 only);
3. the dropout data of all students who have been enrolled for a FAY prior to exiting;
4. Graduation data following cohort rules per Chapter 6.

H. All eligible accountability data that is not included in the school performance score of the alternative school shall be routed to the sending school when the data collection and aggregation processes can produce accurate results except in the following instances.

1. Students transferring from outside the LEA must be enrolled at a non-alternative school for a FAY to be considered a sending school.
2. Accountability data shall not be routed across district lines except as described in Subsection H.

I. All eligible accountability data from an alternative school with insufficient data to be included in accountability shall be routed to the sending schools.

J. The Louisiana School for Math, Science, and the Arts shall be included in accountability according to its configuration, but its assessment data shall also be routed to

the sending schools provided the sending schools have the same assessed grades as the routed data.

K. For routing purposes, a sending school is the school the student last attended.

L. In those cases where a particular grade-level assessment score must be routed from an alternative school to a sending school where the grade does not exist, scores shall be included as follows.

1. *i*LEAP results will be aggregated with the *i*LEAP grade closest in number or 1 grade-level lower.

2. LEAP/EOC results will be aggregated with the LEAP/EOC grade closest in number with consideration for subject area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended 31:423 (February 2005), LR 34:868 (May 2008), LR 35:1472 (August 2009), LR 38:1213 (May 2012).

§3503. Pre-GED/Skills Option Students

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004), LR 32:1028 (June 2006), LR 33:2600 (December 2007), LR 34:868 (May 2008), 35:1473 (August 2009), repealed LR 38:1214 (May 2012).

§3507. Option Considerations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 33:2600 (December 2007), LR 34:868 (May 2008), repealed LR 38:1214 (May 2012).

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Executive Director

1205#039

RULE

Board of Elementary and Secondary Education

Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel (LAC 28:CXLVII.Chapters 1-9)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel*. The policy revisions provide guidelines for incorporating measures of student growth into teacher and administrator evaluations to align the evaluation of school personnel with Act 54 of the 2010 Regular Legislative Session. As required by Act 54, the revisions reflect the recommendations of the superintendent's Advisory Committee on Education Evaluation (ACEE) related to use of the value-added assessment model to measure student growth; use of alternate measures to assess student growth in non-tested grades and subjects; and definitions of effectiveness for

teacher and administrator performance. Act 54 of the 2010 Regular Legislative Session required that BESE develop, adopt, and promulgate all rules necessary for the implementation of the law, in accordance with the Administrative Procedure Act. The policy provides the applicable rules. Upon final adoption, this document replaces in its entirety any previously advertised version.

Title 28

EDUCATION

Part CXLVII. Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel

Chapter 1. Overview

§101. Guidelines of the Program

A. As required by R.S. 17:391.2 et seq., all local educational agencies (LEAs) in Louisiana developed accountability plans to fulfill the requirements as set forth by the laws. Specifically, Act 621 of 1977 established school accountability programs for all certified and other professional personnel. Act 9 of 1977 established a statewide system of evaluation for teachers and principals. Act 605 of 1980 gave the Louisiana Department of Education (LDE) the authority to monitor the LEAs' personnel evaluation programs. Act 54 of 2010 requires that measures of student growth be incorporated into teachers' and administrators' evaluations and represent 50 percent of their final rating. In addition, Act 54 of 2010 requires that all teachers and administrators receive annual evaluations. In passing these Acts, it was the intent of the legislature to establish within each LEA a uniform system for the evaluation of certified and other professional personnel.

B. The guidelines to strengthen local teacher evaluation programs include the Louisiana Components of Effective Teaching and were entitled "Toward Strengthening and Standardizing Local School Districts' Teacher Evaluation Programs." The guidelines were approved by the Louisiana Board of Elementary and Secondary Education (BESE) in September 1992. These guidelines, along with the requirements of the local accountability legislation, form the basis for the local evaluation programs.

C. BESE also authorized the convening of the Louisiana Components of Effective Teaching (LCET) Panel in spring of 1992. The charge of the panel was to determine and to define the components of effective teaching for Louisiana's teachers. Reviewed and revised in the late 90s and 2002, the components are intended to reflect what actually takes place in the classroom of an effective teacher. The original 35 member panel was composed of a majority of teachers. The resulting *Louisiana Components of Effective Teaching*, a descriptive framework of effective teacher behavior, was intended to be a uniform element that served as evaluation and assessment criteria in the local teacher evaluation programs.

D. In 1994, Act I of the Third Extraordinary Session of the 1994 Louisiana Legislature was passed. Act I amended and reenacted several statues related to Local Personnel Evaluation. In April 2000, Act 38 of the Extraordinary Session of the 2000 Louisiana Legislature was passed. Act 38 amended, enacted, and repealed portions of the legislation regarding the local personnel evaluation process. While local school districts are expected to maintain the elements of the local personnel evaluation programs

currently in place and set forth in this document, Act 38 eliminated the LDE's required monitoring of the local implementation. Monitoring of local personnel evaluation programs is to occur as requested by BESE.

E. In August 2008, BESE approved the Performance Expectations and Indicators for Education Leaders to replace the Standards for School Principals in Louisiana, 1998 as criteria for principal evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2250 (October 2010), amended LR 38:1214 (May 2012).

§103. Purposes of Personnel Evaluation [Formerly §105]

A. The purposes for which personnel evaluation will be used in Louisiana are as follows:

1. to support performance management systems that ensure qualified and effective personnel are employed in instructional and administrative positions;

2. to enhance the quality of instruction and administration in public schools;

3. to provide procedures that are necessary to retain effective teachers and administrators and to strengthen the formal learning environment; and

4. to foster continuous improvement of teaching and learning by providing opportunities for targeted professional growth and development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10, R.S. 17:3871-3873, R.S. 17:3881-3884, and R.S. 1309-3904.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2250 (October 2010), and amended LR 38:1215 (May 2012).

§105. Framework for LEA Personnel Evaluation Programs [Formerly §109]

A. Each local school board has the responsibility of providing a program for the evaluation of certified and other professional personnel employed within the system. Programs should be appropriate and should meet the needs of the school district.

B. Local Personnel Evaluation Plans defined by the board shall include, at a minimum, the following elements.

1. Job Descriptions. The LEA shall establish job descriptions for every category of teacher and administrator. All job descriptions shall contain the criteria for which the teacher or administrator shall be evaluated.

2. Professional Growth Planning Process. The LEA shall provide guidelines for teachers and administrators to develop a professional growth plan with their evaluators. Such plans must be designed to assist each teacher or administrator in demonstrating effective performance, as defined by this bulletin. Each plan will include objectives as well as the strategies that the teacher or administrator intends to use to attain each objective.

3. Observation/Data Collection Process. The evaluator or evaluators of each teacher and administrator shall conduct a minimum of one formal, announced observation and at

least one other informal, unannounced observation of instructional practice per academic year. Each teacher observation must last at least one complete lesson. For each formal observation, evaluators shall conduct a pre-observation conference with their evaluatee during which the teacher or administrator shall provide the evaluator or evaluators with relevant information. For both formal and informal observations, evaluators shall provide evaluatees with feedback following the observation, including areas for commendation as well as areas for improvement. Additional evidence, such as data from periodic visits to the school and/or classroom as well as written materials or artifacts, may be used to inform evaluation.

4. Professional Development and Support. LEAs shall provide multiple opportunities for teachers and administrators to receive feedback, reflect on individual practice, and consider opportunities for improvement throughout the academic year, and shall provide intensive assistance plans to teachers and administrators, according to the requirements set forth in this bulletin.

5. Grievance Process. LEAs shall include in their Local Personnel Evaluation Plans a description of the procedures for resolving conflict and/or grievances relating to evaluation results in a fair, efficient, effective, and professional manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2251 (October 2010), amended LR 38:1215 (May 2012).

Chapter 3. Personnel Evaluation

§301. Overview of Personnel Evaluation

A. Personnel evaluation for teachers and administrators shall be composed of two parts. Fifty percent of the evaluation shall be composed of applicable measure(s) of growth in student learning. The remaining 50 percent shall be based upon a qualitative assessment of teacher or administrator performance.

1. For teachers, the 50 percent of the evaluation based upon growth in student learning shall measure the growth of their students according to a pre-determined assessment method, using the value-added model, where available, and alternate measures of student growth according to state guidelines, where value-added data are not available. For administrators, the 50 percent of the evaluation based upon growth in student learning shall incorporate a school-wide measure of growth.

2. The 50 percent of the evaluation that is based on a qualitative measure of teacher and administrator performance shall include a minimum of one formal, announced observation or site visit and at least one other informal, unannounced observation or site visit. This portion of the evaluation may include additional evaluative evidence, such as walk-through observation data and evaluation of written work products.

B. The combination of the applicable measure of growth in student learning and the qualitative assessment of performance shall result in a composite score used to distinguish levels of overall effectiveness for teachers and administrators.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1215 (May 2012).

§303. Measures of Growth in Student

Learning—Value-Added Model

A. A value-added model shall be used to measure student growth for the purposes of teacher and administrator evaluation, where available.

B. The value-added model shall be applied to grades and subjects that participate in state-wide standardized tests and for which appropriate prior testing data is available. The value-added model shall not be applied for the purposes of evaluation in any cases in which there are fewer than five students with value-added results assigned to an educator.

C. The value-added model shall be a statistical model approved by the board for linking academic gains of students to teachers in grades and subjects for which appropriate data are available.

D. The value-added model shall take into account the following student-level variables:

1. prior achievement data that are available (up to three years);
2. gifted status;
3. section 504 status;
4. attendance;
5. disability status;
6. eligibility for free or reduced price meals;
7. limited English proficiency; and
8. prior discipline history.

E. Classroom composition variables shall also be included in the model.

F. Additional specifications relating to the value-added model shall be adopted by the board, in accordance with R.S. 17:10.1(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1216 (May 2012).

§305. Measures of Growth in Student Learning—Non-Tested Grades and Subjects

A. The department shall expand the value-added model, as new state assessments become available.

B. For teachers and administrators of non-tested grades and subjects (NTGS), for which there is little or no value-added data available, progress towards pre-determined student learning targets, as measured by state-approved common assessments, where available, shall govern the student growth component of the evaluation. Student learning targets shall include goals which express an expectation of growth in student achievement over a given period of time, as well as common measures for assessing attainment of those goals, such as an identified assessment and/or a body of evidence. The quality of student learning targets as well as the attainment of targets shall be evaluated using a standard rubric provided by the department.

C. A minimum of two student learning targets shall be developed collaboratively between evaluatees in NTGS and their evaluators at the beginning of the academic term and

assessed by evaluators at the end of the term. The department shall provide evaluative tools for evaluators to use in assessing the quality of student learning targets.

1. State-approved common assessments shall be used as part of the body of evidence measuring students' attainment of learning targets, where applicable. At the beginning of each academic year, the department shall publish a list of state-approved common assessments to be used in identified non-tested grades and subject areas.

2. Where no state-approved common assessments for NTGS are available, evaluatees and evaluators shall decide upon the appropriate assessment or assessments to measure students' attainment of learning targets. LEAs may define consistent student learning targets across schools and classrooms for teachers with similar assignments.

D. The department shall provide annual updates to LEAs relating to:

1. the expansion of state-standardized testing and the availability of value-added data, as applicable;
2. the expansion of state-approved common assessments to be used to build to bodies of evidence for student learning where the value-added model is not available; and
3. the revision of state-approved tools to be used in evaluating student learning targets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1216 (May 2012).

§307. Observation Tools

A. LEAs shall utilize an observation tool to conduct a qualitative assessment of teacher and administrator performance, which shall represent the 50 percent of evaluations that is not based on measures of growth in student learning.

B. LEA observation tools shall adhere to the following minimum requirements.

1. The tool for teacher evaluation shall align to the competencies and performance standards contained within the *Louisiana Components of Effective Teaching*, which shall henceforth be called the *Louisiana Teacher Competencies and Performance Standards*. The tool for administrator evaluation shall align to the competencies and performance standards contained within the *Performance Expectations and Indicators for Education Leaders*, which shall henceforth be called the *Louisiana Leader Competencies and Performance Standards*.

a. The *Louisiana Teacher Competencies and Performance Standards* and the *Louisiana Leader Competencies and Performance Standards* may be reviewed as needed by the department in collaboration with educators administering the evaluation system and appropriate third parties to determine the need for modifications and their continuing utility.

b. The board shall approve any changes made to the Louisiana Teacher Competencies and Performance Standards and the Louisiana Leader Competencies and Performance Standards.

2. Observation tools shall provide an overall score between 1.0 and 5.0, where a score of 3.0 indicates that the

evaluatee is meeting expectations. Total scores on observation tools may include tenths of points, indicated with a decimal point.

C. The department shall develop and/or identify model observation tools according to these minimum requirements, which may be adopted by LEAs.

D. LEAs which do not intend to use model observation tools developed or identified by the department shall submit proposed alternate tools to the department for evaluation and approval, LEAs shall submit proposed alternate observation tools to the department prior to June 1.

1. With the submission of proposed alternate observation tools, LEAs may request a waiver to use competencies and performance standards other than those provided in the *Louisiana Teacher Competencies and Performance Standards* and the *Louisiana Leader Competencies and Performance Standards*. Such requests shall include:

a. a justification for how the modified competencies and performance standards will support specific performance goals related to educator and student outcomes; and

b. an explanation of how the LEA will ensure the reliability and validity of the alternate observation tool intended to measure the modified competencies and performance standards.

2. The department may request revisions to proposed alternate observation tools to ensure their compliance with the minimum requirements set forth in this bulletin.

3. If requested, revisions to proposed alternate observation tools shall be submitted to the department by the LEA.

4. LEA- proposed alternate observation tools shall be either approved or denied by the department no later than August 1.

5. LEAs which do not submit proposals to use alternate observation tools prior to June 1 and shall use the department's model observation tools for the following academic year.

6. LEAs which secure department approval for use of an alternate observation tools need not submit them for approval in subsequent years, unless the alternate observation tools is revised, the *Louisiana Teacher/Leader Competencies and Performance Standards* are revised, or revisions to this section are approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1216 (May 2012).

§309. Standards of Effectiveness

A. Teachers and administrators shall receive a final composite score on annual evaluations to determine their effectiveness rating for that academic year.

1. The 50 percent of evaluations that is based on student growth will be represented by a sub-score between 1.0 and 5.0.

a. If an educator has both value-added data and other student growth data in non-tested grades and subject areas, the student growth score shall be calculated as a

weighted average of the value-added score and NTGS score, based on the number of students included in each score. The department shall provide resources to LEAs relating to this calculation.

2. The 50 percent of evaluations that is based on a qualitative assessment of performance will also be represented by a sub-score between 1.0 and 5.0.

3. The final composite score for teachers and administrators shall be the average of the two sub-scores and shall be represented as a score between 1.0 and 5.0.

B. The composite score ranges defining *Ineffective*, *Effective (Emerging, Proficient, or Accomplished)* and *Highly Effective* performance shall be as follows.

Effectiveness Rating	Composite Score Range
Ineffective	1.0 - 1.9
Effective: Emerging	2.0 - 2.6
Effective: Proficient	2.7 - 3.3
Effective: Accomplished	3.4 - 4.0
Highly Effective	4.1 - 5.0

C. Any educator receiving a rating of *Ineffective* in either the student growth or the qualitative performance component of the evaluation shall receive an overall final rating of *ineffective*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1217 (May 2012).

§311. Evaluators

A. LEAs shall establish and maintain an accountability relationships register to clearly define who shall be the evaluator or evaluators within the ranks of teachers and administrators.

B. Evaluators of teachers shall be school principals, assistant principals, or the evaluatee's respective supervisory level designee.

1. Other designees, such as instructional coaches and master/mentor teachers may conduct observations to help inform the evaluator's assessment of teacher performance. These designees shall be recorded as additional observers within the accountability relationships register.

C. Evaluators of administrators shall be LEA supervisors, Chief Academic Officers, Superintendents, or the evaluatee's respective supervisory level designee.

D. All evaluators shall be certified to serve as evaluators, according to the minimum requirements provided by the department.

1. The department or its contractor shall serve as the sole certifier of evaluators.

2. The evaluator certification process shall include an assessment to ensure inter-rater reliability and accuracy of ratings, based on the use of the teacher or leader observational rubric.

3. Evaluators on record must renew certification to evaluate annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1217 (May 2012).

§313. Professional Development

A. LEAs shall provide professional development to all teachers and administrators, based upon their individual areas of improvement, as measured by the evaluation process. Professional development opportunities provided by LEAs shall meet the following criteria.

1. Professional development shall be job-embedded, where appropriate.

2. Professional development shall target identified individualized areas of growth for teachers and administrators, based on the results of the evaluation process, as well as data gathered through informal observations or site visits, and LEAs shall utilize differentiated resources and levels of support accordingly.

3. Professional development shall include follow-up engagement with participants, such as feedback on performance, additional supports, and/or progress-monitoring.

4. Professional development shall include measureable objectives to evaluate its effectiveness, based on improved teacher or administrator practice and growth in student learning.

B. Failure by the LEA to provide regular professional development opportunities to teachers and administrators shall not invalidate any results of the evaluation process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1218 (May 2012).

§315. Intensive Assistance

[Formerly §329]

A. An intensive assistance plan shall be developed by evaluators and evaluatees when an evaluatee has received an overall rating of *Ineffective* or has consistently demonstrated *Ineffective* performance, as determined by the evaluator, prior to receiving such a rating.

B. An intensive assistance plan shall be developed with the evaluatee within 30 school days of an evaluation resulting in the initiation of the intensive assistance plan.

C. The evaluatee shall be formally re-evaluated within one calendar year of the initiation of the intensive assistance plan.

D. If the evaluatee is determined to be *Ineffective* after a formal evaluation conducted immediately upon completion of the intensive assistance plan or if the intensive assistance plan is not completed in conformity with its provisions, the LEA shall initiate termination proceedings within six months following such unsatisfactory performance.

E. The intensive assistance plan shall be developed collaboratively by the evaluator and the evaluatee and must contain the following information:

1. what the evaluatee needs to do to strengthen his/her performance including a statement of the objective(s) to be accomplished and the expected level(s) of performance according to student growth and/or qualitative measures;

2. an explanation of the assistance/support/resource to be provided or secured by the school district and/or the school administrator;

3. the date that the assistance program shall begin;

4. the date when the assistance program shall be completed;

5. the evaluator's and evaluatee's signatures and date lines (Signatures and dates shall be affixed at the time the assistance is prescribed and again after follow-up comments are completed.);

6. the timeline for achieving the objective and procedures for monitoring the evaluatee's progress (not to exceed one calendar year);

7. an explanation of the provisions for multiple opportunities for the evaluatee to obtain support and feedback on performance (The intensive assistance plans shall be designed in such a manner as to provide the evaluatee with more than one resource to improve.); and

8. the action that will be taken if improvement is not demonstrated.

F. Completed intensive assistance plans and appropriate supporting documents, such as observations, correspondence, and any other information pertinent to the intensive assistance process, shall be filed in the evaluatee's single official file at the central office. The evaluatee shall receive a copy of the signed intensive assistance plan and any supporting documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10, R.S. 17:3871-3873, R.S. 17:3881-3884, and R.S. 1309-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2251 (October 2010), amended LR 38:1218 (May 2012).

§317. Due Process and Grievance Procedures

[Formerly §333]

A. The LEA shall establish grievance procedures to address the following components of due process.

1. The evaluatee shall be provided with a copy of his/her evaluation results no later than 15 days after the final evaluation rating is determined and shall be entitled to any documentation related to the evaluation.

2. The evaluatee shall be entitled to provide a written response to the evaluation, to become a permanent attachment to the evaluatee's single official personnel file.

3. Upon the request of the evaluatee, a meeting between the evaluatee and the evaluator shall be held after the evaluation and prior to the end of the academic year.

4. The evaluatee shall be entitled to grieve to the superintendent or his/her designee, if the conflict in question is not resolved between evaluatee and evaluator. The evaluatee shall be entitled to representation during the grievance procedure.

5. Copies of the evaluation results and any documentation related thereto of any school employee may be retained by the LEA, the board, or the department and, if retained, are confidential, do not constitute a public record, and shall not be released or shown to any person except as provided by law.

B. Failure by the LEA to adhere to the requirements of this section shall be a grievable matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2252 (October 2010), amended LR 38:1218 (May 2012).

§319. Staff Development for Personnel Involved in Evaluation [Formerly §335]

A. LEAs shall provides training on a continuing basis for all staff involved in the evaluation process (i.e., district level administrators and supervisors, principals and assistant principals, and other observers, and classroom teachers). It is recommended that all training concentrate on fostering the elements listed below:

1. a positive, constructive attitude toward the teacher and administrator evaluation process;
2. a knowledge of state laws and LEA policies governing the evaluation process for teachers and administrators, along with the associated procedures for intensive assistance and due process;
3. an understanding of the Louisiana Teacher Competencies and Performance Standards
4. an understanding of the Louisiana Leader Competencies and Performance Standards;
5. an understanding of the measures of growth in student learning, as adopted by the board; and
6. an understanding of the process for calculating a composite score to determine final effectiveness ratings for teachers and administrators and the applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10, R.S. 17:3871-3873, R.S. 17:3881-3884, and R.S. 1309-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2252 (October 2010), amended LR 38:1219 (May 2012).

§321. Evaluation Records Guidelines

A. Copies of evaluation results and any related documentation shall be retained by the LEA,

B. All such files shall be confidential and shall not constitute a public record.

C. Such files shall not be released or shown to any person except:

1. the evaluated employee or his/her designee;
2. authorized school system officers and employees for all personnel matters, including employment application, and for any hearing, which relates to personnel matters, which includes the authorized representative of any school or school system, public or private, to which the employee has made application for employment; and
3. for introduction in evidence or discovery in any court action between the local board and a teacher when:
 - a. the performance of the teacher is at issue; or
 - b. the evaluation was an exhibit at a hearing, the result of which is being challenged.

D. Any local board considering an employment application for a person evaluated pursuant to this bulletin shall request such person’s evaluation results as part of the application process, regardless of whether that person is already employed by that school system or not, and shall notify the applicant that evaluation results shall be requested as part of this mandated process. The applicant shall be given the opportunity to apply, review the information received, and provide any response or information the applicant deems applicable.

E. The state superintendent of education shall make available to the public the data specified in R.S. 17:3902(B)(5) as may be useful for conducting statistical analyses and evaluations of educational personnel. However,

the superintendent shall not reveal information pertaining to the evaluation report of a particular employee.

F. Public information may include school level student growth data, as specified in R.S. 17:3902(B)(5).

G. Nothing in this section shall be interpreted to prevent de-identified student growth data from public view.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1219 (May 2012).

§323. Job Descriptions [Formerly §339]

A. The Local Personnel Evaluation Plan shall contain a copy of the job descriptions currently in use in the LEA. The LEA shall establish a competency-based job description for every category of teacher and administrator pursuant to its evaluation plan. The chart that follows identifies a minimum listing of the categories and titles of personnel for which job descriptions must be developed

Personnel Category	Position or Title
Administration	1. Superintendent
	2. Assistant Superintendent
	3. Director
	4. Supervisor
	5. Coordinator
	6. Principal
	7. Assistant Principal
	8. Any employee whose position does not require certification but does require a minimal education attainment of a bachelor's degree from an accredited institution of higher learning
	9. Any employee whose position requires certification, but whose title is not given in this list
	10. Any employee who holds a major management position, but who is not required to have a college degree or certification
Instructional Personnel	1. Teachers of Regular and Sp. Ed. students
	2. Special Projects Teachers
	3. Instructional Coaches and/or Master Teachers
Support Services	1. Guidance Counselors
	2. Librarians
	3. Therapists
	4. Any employee whose position does not require certification but does require a minimal educational attainment of a bachelor's degree from an accredited institution of higher learning
Services	5. Any employee whose position requires certification, but whose title is not given in this list
	6. Any employee who holds a major management position, but who is not required to have a college degree or certification

B. The competency-based job description shall:

1. be grounded in the state standards of performance;
2. include job tasks that represent the essential knowledge, skills and responsibilities of an effective teacher or administrator that lead to growth in student achievement;
3. be reviewed regularly to ensure that the description represents the full scope of the teacher’s or administrator’s responsibilities; and
4. be distributed to all certified and professional personnel prior to employment. If said job description is modified based on the district’s annual review, it must be

distributed to all certified and professional teachers and leaders prior to the beginning of the next school year.

C. The following components shall be included in each job description developed:

1. position title;
 2. overview of position;
 3. position qualifications shall be at least the minimum requirements as stated in *Bulletin 746—Louisiana Standards for State Certification of School Personnel* (The qualifications shall be established for the position, rather than for the employee);
 4. title of the person to whom the employee reports;
 5. performance standards, including statement on responsibility for growth in student learning (refer to * below);
 6. salary or hourly pay range;
 7. statement acknowledging receipt of job description;
- and
8. a space for the employee's signature and date.

NOTE: Job descriptions must be reviewed annually. Current signatures must be on file at the central office in the single official file to document the annual review and/or receipt of job descriptions.

*Job descriptions for instructional personnel must include the *Louisiana Teacher Competencies and Performance Standards*; job descriptions for building-level administrators must include the *Louisiana Leader Competencies and Performance Standards*—as part of the performance responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10, R.S. 17:3871-3873, R.S. 17:3881-3884, and R.S. 1309-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2252 (October 2010), amended LR 38:1219 (May 2012).

§325. Extenuating Circumstances

A. For any year in which a school temporarily closes due to natural disasters or any other unexpected events, districts may request invalidation of student achievement growth data with relation to the value-added assessment model by submitting a letter to the State Superintendent of Education. Requests for invalidation of evaluation results shall be made prior to the state's release of annual value-added results and in no instance later than June 1.

B. Evaluation results shall be invalidated for any teacher or administrator with 30 or more excused absences in a given academic year, due to approved extended leave, such as maternity leave, military leave, extended sick leave, or sabbatical leave.

C. For any other extenuating circumstances that significantly compromise an educator's opportunity to impact student learning, districts may request invalidation of student achievement growth data with relation to the value-added assessment model by submitting such requests in a report to the State Superintendent of Education. Requests for invalidation of evaluation results shall be made prior to the state's release of annual value-added results and no later than June 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1220 (May 2012).

§327. Statement of Assurance [Formerly §345]

A. A statement of assurance shall be signed by the superintendent and a representative of the governing body of the LEA. The statement of assurance includes a statement that the LEA personnel evaluation programs shall be implemented as written. The original Statement of Assurance shall be signed and dated by the LEA superintendent and by the representative of the governing body of the LEA. The department requests that the LEA submit the statement of assurance prior to the opening of each school year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2253 (October 2010), amended LR 38:1220 (May 2012).

§329. Charter School Exceptions

A. Charter governing authorities are subject only to §301, §303, §305, §307, §309, §325, §329, and §701 of this bulletin.

B. Each charter governing authority shall terminate employment of any teacher or administrator determined not to meet standards of effectiveness for three consecutive years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1220 (May 2012).

Chapter 7. Reporting and Monitoring

§701. Annual Summary Reporting Format

A. Each LEA will submit an annual personnel evaluation report of the most recent academic year to the department by July 15th. Information included in the reporting format reflects data deemed necessary in presenting annual reports to the department, as well as to the LEAs. The reporting of such information includes a variety of responses directed toward the collection of data useful to an analysis of the evaluation process from a statewide perspective. Items that are reported by the LEAs on forms provided by the department include, but are not limited to, the following items:

1. individual-level teacher evaluation results, by teacher;
2. the number of certified and other professional personnel, by categories, who were evaluated as performing ineffectively;
3. the number of certified and other professional personnel, by categories, who resigned because of ineffective evaluations or for other reasons related to job performance;
4. the number of certified and other professional personnel, by categories, who were terminated because of not having improved performance within the specified time allotment (Include the reasons for termination.);
5. the number of evaluations, by categories, used to evaluate certified and other professional personnel during the reporting period (Distinguish between the number of evaluations performed for personnel in position 0-3 years as opposed to personnel in position 4 or more years.);

6. the number of certified personnel, by categories, who improved (from ineffective to effective) as a result of the evaluation process (Report the data by distinguishing between personnel in position 0-3 years and personnel in position 4 or more years.);

7. the number of formal grievances filed as a result of ineffective performance ratings or disagreement with evaluation results;

8. the number of formal hearings held because of ineffective performance or disagreement with evaluation results;

9. the number of court cases held because of ineffective job performance (the number reinstated and basic reasons for reinstatement of personnel); and

10. the number of evaluatees who received intensive assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2253 (October 2010), amended LR 38:1220 (May 2012).

Chapter 9. Appendices

§901. Appendix A. Louisiana Teacher Competencies and Performance Standards

A. Competency I. Planning. The teacher plans instruction that meets the needs of all students and demonstrates knowledge of content, instructional strategies, and resources.

1. Performance Standard A. The teacher aligns unit and lesson plans with the established curriculum to meet annual achievement goals.

2. Performance Standard B. The teacher designs lesson plans that are appropriately sequenced with content, activities, and resources that align with the lesson objective and support individual student needs.

3. Performance Standard C. The teacher selects or designs rigorous and valid summative and formative assessments to analyze student results and guide instructional decisions.

B. Competency II. Instruction. The teacher provides instruction to maximize student achievement and meet individual learning needs of all students

1. Performance Standard A. The teacher presents accurate and developmentally-appropriate content linked to real-life examples, prior knowledge, and other disciplines.

2. Performance Standard B. The teacher uses a variety of effective instructional strategies, questioning techniques, and academic feedback that lead to mastery of learning objectives and develop students' thinking and problem-solving skills.

3. Performance Standard C. The teacher delivers lessons that are appropriately structured and paced and includes learning activities that meet the needs of all students and lead to student mastery of objectives.

C. Competency III. Environment. The teacher provides a well-managed, student-centered classroom environment that promotes and reinforces student achievement, academic engagement and mutual respect.

1. Performance Standard A. The teacher implements routines, procedures, and structures that promote learning and individual responsibility.

2. Performance Standard B. The teacher creates a physical, intellectual, and emotional environment that

promotes high academic expectations and stimulates positive, inclusive, and respectful interactions.

3. Performance Standard C. The teacher creates opportunities for students, families, and others to support accomplishment of learning goals.

D. Competency IV. Professionalism. The teacher contributes to achieving the school's mission, engages in self-reflection and growth opportunities, and creates and sustains partnerships with families, colleagues and communities.

1. Performance Standard A. The teacher engages in self-reflection and growth opportunities to support high levels of learning for all students.

2. Performance Standard B. The teacher collaborates and communicates effectively with families, colleagues, and the community to promote students' academic achievement and to accomplish the school's mission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2254 (October 2010), amended LR 38:1221 (May 2012).

§903. Appendix B

A. Competency I. Ethics and Integrity. Educational leaders ensure the success of all students by complying with legal requirements and by acting with integrity, fairness, and in an ethical manner at all levels and in all situations.

1. Performance Standard A. Demonstrates compliance with all legal and ethical requirements.

2. Performance Standard B. Publicly articulates a personal philosophy.

3. Performance Standard C. Creates a culture of trust by interacting in an honest and respectful manner with all stakeholders.

4. Performance Standard D. Models respect for diversity.

B. Competency II. Instructional Leadership. Educational leaders collaborate with stakeholders and continuously improve teaching and learning practices to ensure achievement and success for all.

1. Performance Standard A. Establishes goals and expectations.

2. Performance Standard B. Plans, coordinates, and evaluates teaching and the curriculum.

3. Performance Standard C. Promotes and participates in teacher learning and development.

4. Performance Standard D. Creates a school environment that develops and nurtures teacher collaboration.

C. Competency III. Strategic Thinking. Education leaders ensure the achievement of all students by guiding all stakeholders in the development and implementation of a shared vision, a strong organizational mission, school-wide goals, and research-based strategies that are focused on high expectations of learning and supported by an analysis of data.

1. Performance Standard A. Engages stakeholders in determining and implementing a shared vision, mission, and goals that are focused on improved student learning and are specific, measurable, achievable, relevant, and timely (SMART).

2. Performance Standard B. Formulates and implements a school improvement plan to increase student achievement that is aligned with the school's vision, mission and goals; is based upon data; and incorporates research-based strategies and action and monitoring steps.

3. Performance Standard C. Monitors the impact of the school-wide strategies on student learning by analyzing data from student results and adult implementation indicators.

D. Competency IV. Resource Management. The leader aligns resources and human capital to maximize student learning to achieve state, district and school-wide goals.

1. Performance Standard A. Manages time, procedures, and policies to maximize instructional time as well as time for professional development opportunities that are aligned with the school's goals.

2. Performance Standard B. Allocates financial resources, to ensure successful teaching and learning.

3. Performance Standard C. Creates a safe, healthy environment to ensure effective teaching and learning.

E. Competency V. Educational Advocacy. Educational leaders ensure the success of all students by staying informed about research in education and by influencing interrelated systems and policies that support students' and teachers' needs.

1. Performance Standard A. Provides opportunities for multiple stakeholder perspectives to be voiced for the purpose of strengthening school programs and services.

2. Performance Standard B. Stays informed about research findings, emerging trends, and initiatives in education in order to improve leadership practices.

3. Performance Standard C. Acts to influence national, state, and district and school policies, practices, and decisions that impact student learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2256 (October 2010), amended LR 38:1221 (May 2012).

§905. Definitions

A. In order that consistency in terminology be maintained on a statewide basis, the department has established a list of terms and definitions. Careful consideration of each should be given during the training and implementation of personnel evaluation programs. The definitions below must be adopted by all LEA's. If additional terms are necessary in establishing a clear and concise understanding of evaluation procedures, they must be included in the LEA Local Personnel Evaluation Plan.

Accountability—shared responsibility for actions relating to the education of children.

Administrator—any person whose employment requires professional certification under the rules of the board or who is employed in a professional capacity other than a teacher, including but not limited to directors, principals, and supervisors.

Beginning Teacher—any teacher in their first three years of the profession.

Board—State Board of Elementary and Secondary Education.

Certified School Personnel—those persons whose positions require certification.

Charter School—an independent public school that provides a program of elementary and/or secondary education established pursuant to and in accordance with the provisions of the Louisiana Charter School Law to provide a learning environment that will improve student achievement.

Classroom Visitation—an informal visit to a classroom of sufficient duration to monitor progress toward achievement of professional growth plan objectives and to provide support or assistance.

Common assessment—a state-approved assessment to be used for measuring student growth in grades and subjects where value-added data is not available.

Components of Effective Teaching—the elements of teaching performance defined by the board in formal, recognized collaboration with educators and other stakeholders involved in education, to be critical to providing effective classroom instruction, henceforth referred to as the *Louisiana Teacher Competencies and Performance Standards*.

Competencies—skills, knowledge, and abilities required to demonstrate a particular level of performance.

Criteria—demonstrable levels of performance upon which a judgment may be based.

Department—Louisiana Department of Education

Due Process—fair and impartial treatment, including notice and an opportunity to be heard.

Duties—those actions normally required of a position as assigned and/or described in the position description that are necessary to enable the class, school, or school district to accomplish its objectives.

Educational Leader—a person who is certified to serve in any school or district leadership capacity with the exception of Superintendent.

Evaluation—process by which a local board monitors continuing performance of its teachers and administrators annually, by considering judgments concerning the professional accomplishments and competencies of a certified employee, as well as other professional personnel, based on a broad knowledge of the area of performance involved, the characteristics of the situation of the individual being evaluated, and the specific standards of performance pre-established for the position.

Evaluatee—teacher or administrator undergoing evaluation

Evaluator—one who evaluates; the school principal or assistant principal or respective supervisory level designees charged with evaluating teachers or the superintendent or other LEA-level supervisor charged with evaluating administrators.

Formal Observation—an announced observation of a teacher in which the evaluator observes the beginning, middle, and end of a lesson, that is preceded by a pre-observation conference and followed by a post-observation conference in which the teacher is provided feedback on his/her performance.

Formal Site Visit—an announced site visit by an administrator’s evaluator, that is preceded by a pre-visit conference and followed by a post-visit conference in which the administrator is provided feedback on his/her performance.

Grievance—a procedure that provides a fair and objective resolution of complaint by an evaluatee that the evaluation is inaccurate due to evaluator bias, omission, or error.

Intensive Assistance Plan—the plan that is implemented when it is determined, through the evaluation process, that personnel have not meet the standards of effectiveness. This plan includes the specific steps the teacher or administrator shall take to improve; the assistance, support, and resources to be provided by the LEA; an expected timeline for achieving the objectives and the procedure for monitoring progress, including observations and conferences; and the action to be taken if improvement is not demonstrated.

Job Description—a competency-based summary of the position title, qualification, supervisor, supervisory responsibilities, duties, job tasks, and standard performance criteria, including improving student achievement, that specify the level of job skill required. Space shall be provided for signature and date.

Local Board—governing authority of the local education agency, parish/city school or local school system.

Local Education Agency (LEA)—city, parish, or other local public school system, including charter schools.

Non-Tested Grades and Subjects (NTGS)—grades and subjects for which a value-added score is not available for teachers or other certified personnel.

Objective—a devised accomplishment that can be verified within a given time, under specifiable conditions, and by evidence of achievement.

Observation—the process of gathering facts, noting occurrences, and documenting evidence of performance.

Performance Expectations—the elements of effective leadership approved by the board that shall be included as evaluation criteria for all building-level administrators, henceforth referred to as the *Louisiana Leader Competencies and Performance Standards*.

Performance Standards—the behaviors and actions upon which performance is evaluated.

Post-Observation Conference—a discussion between the evaluatee and evaluator for the purpose of reviewing an observation and sharing commendations, insights, and recommendations for improvement.

Pre-Observation Conference—a discussion between the evaluatee and the evaluator which occurs prior to a formal observation; the purposes are to share information about the lesson to be observed and to clarify questions that may occur after reviewing of the lesson plan.

Professional Growth Plan—a written plan developed to enhance the skills and performance of an evaluatee. The plan includes specific goal(s), objective(s), action plans, timelines, opportunities for reflection, and evaluation criteria.

Self-Evaluation/Self-Reflection—the process of making considered judgments of one’s own performance concerning professional accomplishments and competencies as a certified employee or other professional person based upon

personal knowledge of the area of performance involved, the characteristics of the given situation, and the specific standards for performance pre-established for the position; to be submitted by the evaluatee to the appropriate evaluator for use in the compilation of the individual’s evaluation.

Standard Certificate—a credential issued by the state to an individual who has met all requirements for full certification as a teacher.

Standard of Effectiveness—adopted by the State Board of Elementary and Secondary Education as the final composite score required for teacher or administrator performance to be considered *effective*.

Student Learning Target—a goal which expresses an expectation of growth in student achievement over a given period of time, as measured by an identified assessment and/or body of evidence.

Teacher—any person whose employment requires professional certification issued under the rules of the board.

Teachers of Record—Educators who are responsible for a portion of a student’s learning outcomes within a subject/course.

Value-Added – the use of prior achievement history and appropriate demographic variables to estimate typical achievement outcomes through a statistical model for students in specific content domains based on a longitudinal data set derived from students who take state-mandated tests in Louisiana for the purpose of comparing typical and actual achievement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2256 (October 2010), amended LR 38:1222 (May 2012).

Catherine R. Pozniak
Executive Director

1205#040

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Assessment (LAC 28: CXV.2307)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators: §2307. Assessment*. Each LEA shall require that every child enrolled in Kindergarten through third grade be given a BESE approved literacy screening. The results of this screening shall be used to plan instruction and provide appropriate and timely intervention. For students with significant hearing or visual impairment, nonverbal students, or students with significant cognitive impairment, the LEA shall provide an alternate assessment recommended by the LDE. The results of the screening provide information required by R.S. 17:182 Student reading skills; requirements; reports. The screening is also mandated by the Board of Elementary and Secondary Education (BESE).

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

Chapter 23. Curriculum and Instruction

§2307. Assessment

A. - B. ...

C. Each LEA shall require that every child enrolled in Kindergarten through third grade be given a BESE approved literacy screening. The results of this screening shall be used to plan instruction and provide appropriate and timely intervention. The results of the screening will also provide information required by RS 17:182 Student reading skills; requirements; reports.

1. For students with significant hearing or visual impairment, nonverbal students, or students with significant cognitive impairment, the LEA shall provide an alternate assessment recommended by the DOE.

2. Each LEA shall report to the DOE screening results by child within the timeframes and according to the guidance established by the DOE.

3. For grades 1 – 3, the school should use the prior year’s latest screening level to begin appropriate intervention until the new screening level is determined.

4. Screening should be used to guide instruction and intervention.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1289 (June 2005), amended LR 38:1224 (May 2012).

Catherine R. Pozniak
Executive Director

1205#042

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School
Administrators—Certification of Personnel
(LAC 28: CXV.505)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §505. Certification of Personnel. The policy revision protects traditional certification, respects local control, and retains the traditionally-certified CAO requirement for non-traditional LEA superintendent, while simultaneously removing the arbitrary, outdated population requirement so that all LEAs may benefit from this flexibility.

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for School
Administrators**

Chapter 5. Personnel

§505. Certification of Personnel

A. ...

* * *

B. In the event that an LEA in Louisiana, through its locally authorized governing board, chooses to select a superintendent who does not meet the eligibility requirements necessary to obtain certification as a superintendent, such LEA may appoint the candidate, provided that:

1. the district appoints a chief academic officer whose primary and substantial job description shall govern the academics of the district including curriculum and instruction;

2. the chief academic officer possesses a valid state-issued teaching certificate;

3. the chief academic officer also meets all criteria required of a superintendent set forth in existing BESE policy; and

4. the chief academic officer is appointed no later than 120 days after the appointment of the superintendent candidate.

C. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:7.1; R.S. 17:24.10; R.S. 17:81; R.S. 17:491; 17:497.2; R.S. 17:1974.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1265 (June 2005), amended LR 33:2353 (November 2007), amended LR 38:1224 (May 2012).

Catherine R. Pozniak
Executive Director

1205#041

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School
Administrators—Scheduling and Student Services
(LAC 28: CXV.907 and 1103)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §907. Secondary Class Times and Carnegie Credit and §1103. Compulsory Attendance. The revisions will set forth policy regarding the newly developed Louisiana Seat Time Waiver (LSTW). There is no federal regulation attached to this action. The Louisiana Seat Time Waiver allows districts additional flexibility to accelerate students by teaching more than one year of content in a single year. The waiver allows districts to maintain varied instructional paces for student in select classes approved by the Louisiana Department of Education through the waiver process. All graduation requirements and GEE/EOC tests must be completed as stated per Bulletin 741.

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

Chapter 9. Scheduling

§907. Secondary—Class Times and Carnegie Credit

A.1. - D. ...

E. Districts may submit applications for a waiver of the instructional time requirement for Carnegie credit to the DOE. The application for a waiver must contain a brief description of the program and an assurance that all other requirements for Carnegie credit and graduation requirements will be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:154.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1271 (June 2005), amended LR 38:1224 (May 2012).

Chapter 11. Student Services

§1103. Compulsory Attendance

A. - G.1.d. ...

e. if instructional time for Carnegie credit has been waived, students still must meet the attendance requirement of 60,120 minutes per year.

G.2. - N. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:112; R.S. 17:221.3-4; R.S. 17:226.1; R.S. 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:546 (April 2006), LR 32:1030 (June 2006), LR 33:2351 (November 2007), LR 35:641 (April 2009), LR 35:1097 (June 2009), LR 35:1475 (August 2009), LR 36:482 (March 2010), LR 36:1224 (June 2010), LR 37:1126 (April 2011), LR 37:2132 (July 2011), LR 38:1225 (May 2012).

Catherine R. Pozniak
Executive Director

1205#043

RULE

Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act—Regulations for Students with Disabilities
(LAC 28:XLIII.540, 541, 542, and 543)

Editor's Note: The following Section is being repromulgated to correct a typographical error. The original Rule can be viewed in its entirety on pages 1006-1008 of the April 20, 2012 edition of the *Louisiana Register*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted revisions to *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act*: Subpart 1. Regulations for Students with Disabilities, §540. Definitions, §541. Use of Seclusion, §542. Physical Restraint, §543. Restrictions on the Use of Seclusion or Physical Restraint. The Rule was developed in response to Act 328 of the 2011 Regular Session of the Louisiana Legislature. The Act requires the state Board of Elementary and Secondary Education to approve rules related to the use of seclusion and restraint for students with exceptionalities in local education agencies in the state. The rule includes definitions, how seclusion will be used and who will determine the use of seclusion. The rule defines the attributes of a seclusion room. The use of physical restraint is described. Restrictions on the use of seclusion and

physical restraint are included in the rule. Notification of parents or legal guardians and the school district's director or supervisor of special education is required when seclusion or restraint is used. Documentation of the use of seclusion or restraint is necessary, and if a student is involved in five incidents in a school year, the student's individualized education plan team shall review and revise the plan if necessary. School districts are required to adopt written guidelines and procedures concerning reporting requirements, notification to parents and school officials and explanations or methods of physical restraint and school employee training. The local school district will report instances where seclusion or physical restraint are used to the Department of Education, which will maintain a database of all reported instances of seclusion and physical restraint.

Title 28

EDUCATION

Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act

Subpart 1. Regulations for Students with Disabilities

Chapter 5. Procedural Safeguards

Subchapter B. Discipline Procedures for Students with Disabilities

§543. Restrictions on the Use of Seclusion or Physical Restraint

A. Seclusion and physical restraint shall not be used as a form of discipline or punishment, as a threat to control, bully, or obtain behavioral compliance, or for the convenience of school personnel.

B. No student shall be subjected to unreasonable, unsafe, or unwarranted use of seclusion or physical restraint.

C. A student shall not be placed in seclusion or physically restrained if he or she is known to have any medical or psychological condition that precludes such action, as certified by a licensed health care provider in a written statement provided to the school in which the student is enrolled.

D. A student who has been placed in seclusion or has been physically restrained shall be monitored continuously. Such monitoring shall be documented at least every 15 minutes and adjustments made accordingly, based upon observations of the student's behavior.

E. A student shall be removed from seclusion or released from physical restraint as soon as the reasons for justifying such action have subsided.

F. The parent or other legal guardian of a student who has been placed in seclusion or physically restrained shall be notified as soon as possible. The school shall document all efforts, including conversations, phone calls, electronic communications, and home visits, to notify the parent of a student who has been placed in seclusion or physically restrained.

G. The director or supervisor of special education shall be notified any time a student is placed in seclusion or is physically restrained.

H. A school employee who has placed a student in seclusion or who has physically restrained a student shall document and report each incident in accordance with the policies adopted by the school's governing authority. Such report shall be submitted to the school principal not later

than the school day immediately following the day on which the student was placed in seclusion or physically restrained and a copy shall be provided to the student's parent or legal guardian.

I. If a student is involved in five incidents in a single school year involving the use of physical restraint or seclusion, the student's Individualized Education Plan team shall review and revise the student's behavior intervention plan to include any appropriate and necessary behavioral supports.

J. The documentation compiled for a student who has been placed in seclusion or has been physically restrained and whose challenging behavior continues or escalates shall be reviewed at least once every three weeks.

K. The governing authority of each public elementary and secondary school shall adopt written guidelines and procedures regarding:

1. reporting requirements and follow-up procedures;
2. notification requirements for school officials and a student's parent or other legal guardian; and
3. an explanation of the methods of physical restraint and the school employee training requirements relative to the use of restraint.

L. The guidelines and procedures shall be provided to all school employees and every parent of a child with an exceptionality.

M. The governing authority of each public elementary and secondary school shall report all instances where seclusion or physical restraint is used to address student behavior to the Department of Education.

N. The Department of Education shall maintain a database of all reported incidents of seclusion and physical restraint of students with exceptionalities and shall disaggregate the data for analysis by school, student age, race, ethnicity, and gender, student disability, where applicable, and any involved school employees.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1225 (April 2012).

Catherine R. Pozniak
Executive Director

1205#037

RULE

Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators—Health and Safety Rules and Regulations for Approved Non-Public School Three-Year-Old Programs
(LAC 28:LXXIX.Chapter 30)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted *Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: Chapter 30, Health and Safety Rules and Regulations for Approved Non-Public School Three-Year-Old Programs. The addition of Chapter

30 provides the rules and regulations to protect the health and safety of three-year-old children who attend prekindergarten at an approved nonpublic elementary school as required by Act 102 of the 2011 Regular Legislative Session.

Title 28 EDUCATION

Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators Chapter 30. Health and Safety Rules and Regulations for Approved Non-Public School Three- Year-Old Programs

§3001. General Requirements

A. The school administrator is charged with the responsibility of monitoring and ensuring the three-year-old prekindergarten classrooms adhere to these guidelines.

B. The school administrator shall maintain in force at all times current liability insurance for the operation of a school to ensure medical coverage for children in the event of accident or injury. The school shall have documentation of the accident or injury on file. Documentation shall consist of the insurance policy or current binder that includes the name of the school facility, physical address of the facility, name of the insurance company, policy number, period of coverage, and explanation of the coverage.

C. The school shall have documentation of yearly sanitation inspection and current approval from the Office of Public Health, Sanitarian Services. If food is catered or transported, approval is needed from the health department.

D. The school shall have documentation of yearly safety inspection and current approval from the Office of State Fire Marshal.

E. The school shall have documentation of yearly safety inspection and current approval from the city fire department (if applicable).

F. A daily attendance record for children, must be maintained by the school. Children who leave and return to the school during the day shall be signed in/out. A computerized sign in/out procedure is acceptable if the record accurately reflects the time of arrival and departure as well as the name of the person to whom the child was released.

G. Any visitor to the school shall sign in/out. Records shall be maintained to accurately reflect persons on the school premises at any given time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S.17:24.8; R.S. 17:222(C); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1226 (May 2012).

§3003. Policies and Procedures Related to Children

A. Rest Time

1. Children who are three-years of age shall have a daily rest period of at least one hour. Schools that serve children in half-day programs are not required to schedule napping periods for these children.

2. Children shall be under direct supervision at all times including naptime. Children shall never be left alone in any room or outdoors without a staff present. All children sleeping shall be in the sight of the staff.

B. Discipline

1. The school shall have written procedures for behavior management appropriate for three-year-olds, including positive techniques, such as modeling, redirection, positive reinforcement and encouragement. The procedures are provided to and discussed with parents at the time of enrollment.

2. The discipline policy shall:

- a. be based on an understanding of each child's individual needs and development;
- b. be clear, consistent and developmentally appropriate rules;
- c. allow children to solve their own conflicts with appropriate guidance and used to facilitate the development of self-discipline in children;
- d. not allow punishment as discipline or guidance;
 - i. the following punishments are never used: abusive or neglectful treatments of children, including corporal punishment, isolation, verbal abuse, humiliation, and denial of outdoor time, food or basic needs; and punishment of soiling, wetting or not using the toilet, including forcing a child to remain in soiled clothing, to remain on the toilet, or any other unusual or excessive practices for toileting;
- e. address children without an IEP who continually cause physical harm to himself/herself or others or continually impede the learning of himself/herself and others because of other challenging behavior.

C. Abuse and Neglect

1. As mandated reporters, all school staff shall report any suspected abuse and/or neglect of a child in accordance with R.S. 14:403 to the local child protection agency. This written policy as well as the local child protection agency's telephone number shall be posted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S.17:24.8; R.S. 17:222(C); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1226 (May 2012).

§3005. Children's Records

A. A record shall be maintained on each child to include:

1. child's information form (mastercard) listing the child's name, birth date, sex, date of admission, and name and phone number of child's physician, dietary restrictions, and allergies; signed and dated by the parent;
2. parental authorization to secure emergency medical treatment;
3. signed agreements between the school and the parent for each child giving permission to release the child to a third party listed by the parent including any other school facilities or transportation services. A child shall never be released to anyone unless authorized in writing by the parent.

B. The school shall maintain the confidentiality and security of all children's records. Employees of the school shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly or indirectly, to any unauthorized person.

C. The school shall obtain written, informed consent from the parent prior to releasing any information, recordings and/or photographs from which the child might be identified, except for authorized state and federal agencies.

D. The school shall obtain documentation signed and dated by the parent indicating their awareness of the school utilizing any type of recordings or taping of children including but not limited to digital recordings, videotaping, audio recordings, web cam, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S.17:24.8; R.S. 17:222(C); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1227 (May 2012).

§3007. Required Staff

A. There shall be regularly employed staff who are capable of fulfilling job duties of the position to which they are assigned.

B. There shall be provisions for substitute staff who are qualified to fulfill duties of the position to which they are assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S.17:24.8; R.S. 17:222(C); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1227 (May 2012).

§3009. Personnel Records

A. A record for each paid and non-paid staff person, including substitutes and foster grandparents shall be on file at the school. Personnel record shall include:

1. an application and/or a staff information form with the following:
 - a. name;
 - b. date of birth;
 - c. address and telephone number;
 - d. previous training/work experience;
 - e. educational background; and
 - f. employee's starting and termination date.
2. Documentation of a satisfactory criminal record check shall be on file. School administrator shall request this clearance prior to the employment of any school staff. No staff with a criminal conviction of a felony, a plea of guilty or nolo contendere of a felony, or any offense of a violent or sexual nature, or any offense involving a juvenile victim shall be employed in a school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S.17:24.8; R.S. 17:222(C); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1227 (May 2012).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1227 (May 2012).

§3011. Required Staff Development and Training

A Orientation Training

1. Prior to employment and prior to having sole responsibility for a group of children, each staff member, including substitutes and foster grandparents, shall receive orientation training to include the following topics:

- a. school policies and practices including health and safety procedures;
 - b. emergency and evacuation plan;
 - c. supervision of children;
 - d. discipline policy;
 - e. individual needs of the children enrolled;
 - f. detecting and reporting child abuse and neglect;
- and
- g. confidentiality of information regarding children and their families.

B. CPR and First Aid

1. A minimum of three staff (including the teachers of three- and four-year-olds) on the school premises during school hours and accessible to the children at all times shall have documentation of current infant/child/adult certification in CPR. Original cards shall be made available upon request.

2. A minimum of three staff (including the teachers of three- and four-year-olds) on the school premises during school hours and accessible to children shall have documentation of current pediatric first aid certification. Original cards shall be made available upon request.

C. Emergency Procedures

1. The school administrator shall ensure that written procedures for emergencies and evacuation as appropriate for the area in which the class is located such as fire, flood, tornado, hurricane, chemical spill, train derailment, etc. are available.

NOTE: For additional information contact the Office of Emergency Preparedness (Civil Defense) in your area.

D. Extracurricular Water Activities

1. The school staff shall obtain written authorization from the parent for the child to participate in any extracurricular water activity. The statement shall list the child's name, type of water activity, location of water activity, parent's signature and date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S.17:24.8; R.S. 17:222(C); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1227 (May 2012).

§3013. Required Child/Staff Ratios

A. The class size for prekindergarten three-year-old classes shall not exceed a maximum of 13 children for one qualified teacher. Schools that choose to use the assistance of a full-time paraprofessional may have a maximum of 20 per class.

B. Child/staff ratio plus one additional adult shall be met for all field trips and non-vehicular excursions.

C. When the nature of a special need or the number of children with special needs warrants added care, the school administrator shall add sufficient staff as deemed necessary to compensate for these needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S.17:24.8; R.S. 17:222(C); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1228 (May 2012).

§3015. Food Service and Nutrition

A. If the school provides meals and snacks, then well-balanced and nourishing meals and snacks shall be provided as specified under state and/or federal regulations.

B. Drinking water shall be available indoors and outdoors to all children. Drinking water shall be offered at least once between meals and snacks to all children.

C. When a child requires a special diet, a written statement from a medical authority shall be on file.

D. Children with food allergies/intolerance shall have a written statement signed by the parent indicating the specific food allergy/intolerance.

E. When a child requires a modified diet for religious reasons, a written statement to that effect from the child's parent shall be on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S.17:24.8; R.S. 17:222(C); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1228 (May 2012).

§3017. Health Service to the Child

A. A school that gives medication assumes additional responsibility and liability for the safety of the children. The staff person(s) administering medication shall be trained in medication administration. The training shall be obtained every two years.

B. No medication of any type, prescription, non-prescription, special medical procedure shall be administered by school staff unless authorized in writing by the parent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S.17:24.8; R.S. 17:222(C); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1228 (May 2012).

Catherine R. Pozniak
Executive Director

1205#044

RULE

**Department of Education
Board of Regents**

Academic Program Standards (LAC 28:IX.305)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 17:1808, that the Board of Regents has amended Chapter 3, Section 305.F-G to require licensed educational institutions wishing to offer teacher education or education leadership programs to meet the same program accreditation requirements as Louisiana's institutions to continue offering that program in Louisiana.

Title 28

EDUCATION

Part IX. Regents

Chapter 3. Criteria and Requirements for Licensure

§305. Academic Program Standards

A. - E.

F. For all courses/programs for teachers and educational leaders (e.g., teacher leaders, principals, school/district supervisors, superintendents, etc.), provide evidence of attainment of national accreditation (e.g., National Council for Accreditation of Teacher Education—NCATE; Teacher Education Accreditation Council—TEAC).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21:169 (February 1995), LR 38:1228 (May 2012).

Dr. Larry Tremblay
Interim Deputy Commissioner

1205#019

RULE

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs

Early Start Program—Statewide General Education Course
Articulation Matrix and Approved LAICU Institutions
(LAC 28:IV.1415)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1). (SG12135R)

Title 28

EDUCATION

Part IV. Student Financial Assistance—Higher Education

Scholarship and Grant Programs

Chapter 14. Early Start Program

§1415. General Provisions

A. ...

B. The Board of Regents shall maintain a Statewide General Education Course Articulation Matrix for participating public postsecondary institutions.

C. The Board of Regents shall approve on a semester by semester basis the courses offered by LAICU postsecondary institutions that are approved for use in the Early Start Program.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2611 (December 2007), amended LR 34:242 (February 2008), LR 35:234 (February 2009), LR 38:1229 (May 2012).

George Badge Eldredge
General Counsel

1205#074

RULE

Department of Environmental Quality Office of the Secretary

2011 Annual Incorporation by Reference of
Federal Air Quality Regulations
(LAC 33:III.506, 507, 2160, 3003, 5116,
5122, 5311 and 5901)(AQ325ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.507, 2160, 3003, 5116, 5311 and 5901 (Log #AQ325ft).

This Rule is identical to federal regulations found in 40 CFR Part 51, Appendix M; 40 CFR Part 60; 40 CFR Part 61; 40 CFR Part 63; 40 CFR Part 68; 40 CFR Part 70.6(a) and 40 CFR Part 96, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or P.O. Box 4302, Baton Rouge, LA 70821-4302. No fiscal or

economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule incorporates by reference (IBR) into the Louisiana Administrative Code (LAC), Title 33, Part III, Air, the following federal regulations included in the July 1, 2011 editions of the *Code of Federal Regulations* (CFR): 40 CFR Parts, 51, Appendix M, 60, 61, 63, 68, 70.6(a) and 96. Any exception to the IBR is explicitly listed in this Rule. This Rule updates the reference to July 1, 2011, for the Standards of Performance for New Stationary Sources, 40 CFR Part 60. It also updates the references to July 1, 2011 for the National Emission Standards for Hazardous Air Pollutants (NESHAP) and for NESHAP for Source Categories, 40 CFR Parts 61 and 63. In order for Louisiana to maintain equivalency with federal regulations, certain regulations in the most current *Code of Federal Regulations*, July 1, 2011, must be adopted into the *Louisiana Administrative Code* (LAC). This rulemaking is also necessary to maintain delegation authority granted to Louisiana by the Environmental Protection Agency. The basis and rationale for this Rule are to mirror the federal regulations as they apply to Louisiana's affected sources. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§506. Clean Air Interstate Rule Requirements

A. - B.4. ...

C. Annual Sulfur Dioxide. Except as specified in this Section, The federal SO₂ model rule, published in the *Code of Federal Regulation* at 40 CFR Part 96, July 1, 2011, is hereby incorporated by reference, except for Subpart III-CAIR SO₂ OPT-in Units and all references to opt-in units.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:1597 (September 2006), amended LR 33:1622 (August 2007), LR 33:2083 (October 2007), LR 34:978 (June 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), repromulgated LR 36:2551 (November 2010), amended LR 37:2989 (October 2011), amended by the Office of the Secretary, LR 38:1229 (May 2012).

§507. Part 70 Operating Permits Program

A. - B.1. ...

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits

issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2011. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:808 (May 2006), LR 33:1619 (August 2007), LR 33:2083 (October 2007), LR 33:2630 (December 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), amended by the Office of the Secretary, LR 37:2990 (October 2011), amended by the Office of the Secretary, LR 38:1229 (May 2012).

Chapter 21. Control of Emission of Organic Compounds

Subchapter N. Method 43—Capture Efficiency Test Procedures

Editor's Note: This Subchapter was moved and renumbered from Chapter 61 (December 1996).

§2160. Procedures

A. Except as provided in Subsection C of this Section, the regulations at 40 CFR Part 51, Appendix M, July 1, 2011, are hereby incorporated by reference.

B. - C.2.b.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:809 (May 2006), LR 33:1620 (August 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), LR 37:2990 (October 2011), amended by the Office of the Secretary, LR 38:1230 (May 2012).

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference

§3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60

A. Except for 40 CFR Part 60, Subpart AAA, and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal*

Regulations at 40 CFR Part 60, July 1, 2011, are hereby incorporated by reference as they apply to the state of Louisiana.

B. - B.10. ...

C. The volumes containing those federal regulations incorporated by reference may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402 or their website, www.gpoaccess.gov/cfr/index.html.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006), LR 33:1620 (August 2007), LR 33:2092 (October 2007), LR 33:2626 (December 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2273 (October 2010), LR 37:2990 (October 2011), amended by the Office of the Secretary, LR 38:1230 (May 2012).

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants, published in the *Code of Federal Regulations* at 40 CFR Part 61, July 1, 2011, and specifically listed in the following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana.

40 CFR Part 61	Subpart/Appendix Heading
	* * *
[See Prior Text in Subpart A – Appendix C]	

B. - B.2. ...

C. The volumes containing those federal regulations incorporated by reference may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402 or their website, www.gpoaccess.gov/cfr/index.html.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1797 (October 1999), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:699 (May 2003), LR 30:1009 (May 2004), amended

by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 32:809 (May 2006), LR 33:1620 (August 2007), LR 33:2094 (October 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2273 (October 2010), LR 37:2990 (October 2011), amended by the Office of the Secretary, LR 38:1230 (May 2012).

Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources

§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2011, are hereby incorporated by reference as they apply to major sources in the state of Louisiana.

B. The volumes containing those federal regulations incorporated by reference may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402 or their website, www.gpoaccess.gov/cfr/index.html.

C. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 31:3115 (December 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007), LR 33:2095 (October 2007), LR 33:2677 (December 2007), LR 34:1392 (July 2008), LR 35:1108 (June 2009), LR 36:2273 (October 2010), LR 37:2991 (October 2011), amended by the Office of the Secretary, LR 38:1231 (May 2012).

Chapter 53. Area Sources of Toxic Air Pollutants

Subchapter B. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources

§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2011, are hereby incorporated by reference as they apply to area sources in the state of Louisiana.

B. The volumes containing those federal regulations incorporated by reference may be obtained from the

Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402 or their website, www.gpoaccess.gov/cfr/index.html.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007), LR 33:2096 (October 2007), LR 34:1392 (July 2008), LR 35:1108 (June 2009), LR 36:2274 (October 2010), LR 37:2991 (October 2011), amended by the Office of the Secretary, LR 38:1231 (May 2012).

Chapter 59. Chemical Accident Prevention and Minimization of Consequences

Subchapter A. General Provisions

§5901. Incorporation by Reference of Federal Regulations

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68, July 1, 2011.

B. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:810 (May 2006), LR 33:1621 (August 2007), LR 34:1392 (July 2008), LR 35:1109 (June 2009), LR 36:2274 (October 2010), LR 37:2991 (October 2011), amended by the Office of the Secretary, LR 38:1231 (May 2012).

Herman Robinson, CPM
Executive Counsel

1205#009

RULE

**Department of Environmental Quality
Office of the Secretary**

Nonattainment New Source Review Procedures
(LAC 33:III.504)(AQ326)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.504 (AQ326).

The Baton Rouge area (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) is currently designated as nonattainment with respect to the 1997 8-hour ozone NAAQS of 0.08 parts per million (ppm). Consequently, increases of NOX and VOC emissions are governed by Nonattainment New Source Review (NNSR) procedures under LAC 33:III.504. Under NNSR, owners or operators of new major stationary sources or major modifications must offset the emissions increase that would result from the proposed construction or modification by obtaining Emission Reduction Credits (ERC) banked in accordance with LAC 33:III.Chapter 6.

On August 30, 2011, EPA proposed to redesignate the Baton Rouge area to attainment of the 1997 ozone NAAQS (76 FR 53853). When this re-designation becomes effective, NNSR provisions, including those requiring offsets for significant NOX and VOC increases, will no longer be mandated by the Clean Air Act. However, another ozone standard will soon be implemented, and Baton Rouge will once again be designated as a nonattainment area.

On March 27, 2008, EPA lowered the ozone NAAQS from 0.08 ppm to 0.075 ppm (73 FR 16436); this standard became effective on May 27, 2008. However, on September 16, 2009, the agency announced that it would reconsider the ozone NAAQS. In concert with this decision, EPA stayed the 2008 standard with respect to designations. On January 19, 2010, EPA proposed that the level of the primary standard should instead be set within the range of 0.060 to 0.070 ppm (75 FR 2938). However, on September 2, 2011, President Obama "requested that Administrator Jackson withdraw the draft Ozone National Ambient Air Quality Standards." Because the ozone standard will not be revisited for several years, EPA is moving ahead with certain required actions to implement the 2008 standard. Based on air quality data from 2008–2010, Baton Rouge will be designated as nonattainment. EPA expects to finalize area designations by "mid-2012."

Therefore, based on EPA's implementation schedule, Baton Rouge will be an attainment area for a short period of time. According to LAC 33:III.504.F.2, "all emission reductions claimed as offset credit must have occurred later than the date upon which the area was designated nonattainment." Consequently, if this provision is not repealed, there will be no ERC available once the Baton Rouge area is formally designated as nonattainment under the 2008 ozone standard. The basis and rationale for this Rule are to preserve ERC applied for or approved in accordance with LAC 33:III.Chapter 6 after Baton Rouge is formally designated as nonattainment under the 2008 8-hour ozone NAAQS. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air
Chapter 5. Permit Procedures
§504. Nonattainment New Source Review (NNSR)
Procedures
A. - F.1. ...
2. Repealed and Reserved.
F.3. - M.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), amended by the Office of the Secretary, LR 38:1232 (May 2012).

Herman Robinson, CPM
Executive Counsel

1205#010

RULE
Department of Environmental Quality
Office of the Secretary
Legal Division

Waste Expedited Permitting Process
(LAC 33:I.1801)(OS090)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Office of the Secretary regulations, LAC 33:I.1801.B.4 (OS090).

This Rule changes the application process and issuance of solid waste permits. This change will allow solid waste permitting actions to be issued under the expedited permitting program found in LAC 33:I.Chapter 18. It will also allow permits under the hazardous waste program to be expedited. The solid waste permit system has been lengthy and cumbersome. Applicants have had to wait for a period of many years for a permit decision. DEQ revised the solid waste regulations to allow for a more direct permit approach, providing clarification of the regulations. These improvements can be complimented by reducing the timeline needed to obtain a solid waste permit. This Rule provides an expedited process to obtain a solid waste permit. The basis and rationale for this Rule is to allow permit actions to be issued in a more timely fashion and enhance the DEQ's ability to more efficiently process pending waste permit applications. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary
Subpart 1. Departmental Administrative Procedures
Chapter 18. Expedited Permit Processing Program
§1801. Scope
A. - B.3. ...

4. A request for expedited permit processing submitted prior to submittal of the associated permit application will not be considered.

5. Requests for exemptions, letters of no objection, and other miscellaneous letters of response are not eligible for expedited permit processing.

C. - E.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.5.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1013 (June 2007), amended LR 38:1232 (May 2012).

Herman Robinson, CPM
Executive Counsel

1205#011

RULE

Department of Health and Hospitals Board of Medical Examiners

Physician Assistants—Practice (LAC 46:XLV.4507)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1261-1292, and the Physician Assistants Practice Act, R.S. 37:1360.21-1360.38, the board has amended LAC 46:XLV, Subpart 2, Chapter 45, Section 4507 of its physician assistant rules. The amendments are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 45. Physician Assistants

§4507. Authority and Limitations of Supervising Physician

A. The supervising physician (SP) is responsible for the responsible supervision, control, and direction of the physician assistant (PA) and retains responsibility to the patient for the competence and performance of the PA.

B. An SP may delegate medical services identified as core competencies by the National Commission on Certification of Physician Assistants ("core competencies"), under general *supervision* as defined in Section 1503.A of this Part.

C. An SP may delegate certain medical services beyond core competencies to a PA provided:

1. the SP is trained and qualified in and performs the service in the course and scope of his or her practice. If the service is provided in a hospital the SP and the PA shall be credentialed to provide the service. PA credentialing shall be in the manner specified in Subparagraph C.5.a of this Section;

2. the SP delegates the service to a PA who has obtained additional training and has documented the ability to perform the service safely and effectively; and

3. the SP provides a level of supervision appropriate to the risk to the patient and the potential for complications requiring the physician's personal attention;

4. credentials file. A primary SP ("PSP") shall maintain a credentials file for each PA for whom he or she serves as a PSP and at least annually assess and document therein the PA's performance as evidenced by the PSP's dated signature. The credentials file shall include a list of services beyond core competencies that the PA may perform and with respect to each shall also document:

a. the PA's training in the service;

b. the PA's ability to provide or perform the service safely and effectively; and

c. the protocols to be followed for the service;

5. a PSP who is employed or under contract with a hospital is not required to maintain a credentials file for a PA, who is also employed or under contract with the same hospital provided:

a. that the PA is individually credentialed by the medical staff organization of the hospital, based on established criteria similar to those utilized for physicians, which takes into consideration the PA's training and qualifications to provide or perform a service beyond core competencies safely and effectively; and

b. the PSP annually reviews, dates and signs the PA's credentials file.

D. An SP:

1. may not serve as a PSP for more than two PAs;

2. shall not act as a SP for more than four PAs simultaneously at the same time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F), R.S. 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 4:112 (April 1978), amended LR 17:1106 (November 1991), LR 22:205 (March 1996), LR 25:32 (January 1999), LR 34:246 (February 2008), LR 38:1233 (April 2012).

Robert L. Marier, M.D.
Executive Director

1205#014

RULE

Department of Health and Hospitals Board of Pharmacy

Cognitive Services (LAC 46:LIII.525)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has adopted a new section of rules, §525, Cognitive Services. The new Rule will define cognitive (other than dispensing) services provided by a pharmacist for the benefit of Louisiana residents, and will require those pharmacists performing such services to possess a Louisiana pharmacist license.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LIII. Pharmacists

Chapter 5. Pharmacists

Subchapter B. Professional Practice Procedures

§525. Cognitive Services

A. Definitions. As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section.

Cognitive Services—those acts and operations related to a patient's drug therapy that are judgmental in nature, based on knowledge, and derived from empirical factual information. Such services may include, but are not necessarily limited to, the following:

- a. drug regimen review, drug use evaluation and drug information;
- b. provision of advice and counsel on drugs, the selection and use thereof to the facility, the patients therein, the health care providers of the facility regarding the appropriateness, use, storage, handling, administration, and disposal of drugs within the facility;
- c. participation in the development of policies and procedures for drug therapy within the institution, including storage, handling, administration, and disposing of drugs and devices;
- d. assuring the compliance with all applicable laws, rules, and regulations;
- e. provision of educational and drug information sources for the education and training of the facility health care professionals;
- f. accepting responsibility for the implementation and performance of review of quality-related or sentinel events.

B. Practice

1. A pharmacist who provides cognitive services to Louisiana residents shall be licensed by the board.

2. Cognitive services provided from outside a permitted pharmacy may not include the physical dispensing of medication to patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1234 (May 2012).

Malcolm J Broussard
Executive Director

1205#002

RULE

Department of Health and Hospitals
Board of Pharmacy

E-Communications (LAC 46:LIII.505, 905 and 1203)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended §505, Licensure, §905, Pharmacy Technician Certificate and §1203, System(s) Registration, of

its rules to facilitate the use of electronic communications processes for several of its credentials, including pharmacist licenses, technician certificates, and automated medication system registrations.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LIII. Pharmacists

Chapter 5. Pharmacists

Subchapter A. Licensure Procedures

§505. Licensure

A. The board shall issue a license upon payment of appropriate fees when the board is satisfied the applicant is competent to practice pharmacy in the state.

1. Renewal. The board shall make the annual pharmacist license renewal application available to all currently licensed Louisiana pharmacists prior to November 1. The completed application along with the appropriate fee shall be submitted to the board by December 31 of each year. A pharmacist's renewal of licensure shall be displayed in the principal location where the pharmacist is engaged in the practice of pharmacy and in such a manner that said renewal may be seen by patrons. A renewal of licensure shall serve as proof of licensure and a pharmacist's license to practice pharmacy for that year of issuance.

a. Active. A pharmacist applicant shall pay the annual renewal fee, attain minimum continuing pharmacy education (CPE) as required, and complete and submit the annual renewal form to the board office before December 31 of each year.

b. Inactive. A pharmacist applicant may make a written request for inactive status from the board. The inactive pharmacist must complete the annual renewal form furnished by the board and submit it with the appropriate fee to the board before December 31 of each year. An inactive pharmacist shall not engage in the practice of pharmacy and is not required to obtain CPE. In order to upgrade an inactive license to active status, an inactive pharmacist shall petition the board and meet requirements of the reinstatement committee and the board. The board shall set the requirements necessary to assure competency for each individual applying for active status.

2. Expired License. A pharmacist license that has not been renewed by December 31 of each year shall expire and be null and void. The holder of an expired license may submit a written request, complete with any supporting documentation, for reinstatement to the board. The request may be referred preliminarily to the board's reinstatement committee for an informal hearing and recommendation that may be considered by the board at its next regularly scheduled meeting. The board may reinstate an expired license upon payment of applicable annual, delinquent, and lapsed license fees pursuant to R.S. 37:1184, as amended, and other conditions as the board deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2083 (October 2003), effective January 1, 2004, LR 33:1124 (June 2007), LR 38:1234 (May 2012).

Chapter 9. Pharmacy Technicians

§905. Pharmacy Technician Certificate

A. - A.5. ...

B. Issuance and Maintenance

1. - 2. ...

3. The annual renewal shall expire and become null and void on June 30 of each year.

a. The board shall make available, no later than May 1 of each year, and application for renewal to all pharmacy technicians to the address of record.

3.b. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1212.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 30:2486 (November 2004), effective January 1, 2005, amended LR 38: 1235 (May 2012).

Chapter 12. Automated Medication Systems

§1203. System(s) Registration

A. The entire system shall be registered with the board and facilities shall meet the following conditions.

1. - 5. ...

6. Annual Renewal. The board shall make available an application for renewal to each registrant on or before May 1 each year. Said application shall be completed, signed, and, with annual fee, returned to the board office to be received on or before June 1 each year.

7. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.A.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:1271 (June 2000), effective July 1, 2000, amended LR 38:1235 (May 2012).

Malcolm J Broussard
Executive Director

1205#003

RULE

**Department of Health and Hospitals
Board of Pharmacy**

Hospital Pharmacy (LAC 46:LIII.1501, 1512 and 1513)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended §1501, Cross References, and §1513, Labeling, and to adopt §1512, Hospital Pharmacy Prepackaging. In particular, the amendments will provide labeling standards for medications compounded or prepackaged in hospital pharmacies.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 15. Hospital Pharmacy

§1501. Cross References

A. For all regulations that apply to permitted hospital pharmacies concerning pharmacy practices not specifically stated in this Chapter, refer to Chapters 11 and 25.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2093 (October 2003), effective January 1, 2004, LR 38:1235 (May 2012).

§1512. Hospital Pharmacy Prepackaging

A. Prepackaging is the preparation of medication in a unit-of-use container by credentialed pharmacy personnel in a pharmacy prior to the receipt of a prescription or medical order for ultimate issuance by a pharmacist in Louisiana.

B. Labeling. The label on the prepackaged container shall contain the following minimum information:

1. drug name;
2. dosage form;
3. strength;
4. quantity dispensed when appropriate;
5. special storage requirements;
6. a unique pharmacy prepackage lot number which shall correspond to the following:

- a. name of manufacturer and/or distributor;
- b. manufacturer's lot or batch number;
- c. date of preparation; and
- d. verifying pharmacist's initials;

7. expiration date according to United States Pharmacopeia (USP) guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1235 (May 2012).

§1513. Labeling

A. All drugs dispensed or compounded by a hospital pharmacy, intended for use within the facility, shall be dispensed in appropriate containers and adequately labeled as to identify patient name and location, drug name(s) and strength, and medication dose(s). Additionally, compounded preparations and sterile preparations shall be labeled with the expiration date or beyond-use date, initials of the preparer, and the pharmacist performing the final check.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2093 (October 2003), effective January 1, 2004, amended LR 38:1235 (May 2012).

Malcolm J Broussard
Executive Director

1205#004

RULE

**Department of Health and Hospitals
Board of Pharmacy**

Penal Pharmacy (LAC 46:LIII.Chapter 18)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has adopted a new Chapter of rules, Chapter 18, Penal Pharmacy. In particular, the new Rule will establish a new category of pharmacy permit for use in penal

institutions owned and operated by governmental organizations. The Rule establishes the credentialing process as well as standards for the distribution of drugs and professional services within those pharmacies.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 18. Penal Pharmacy

§1801. Penal Pharmacy Permit

A. A penal pharmacy permit shall be required to operate a pharmacy located within a penal institution, to provide medications and pharmacy care for offenders residing in that institution or another penal institution owned and operated by that governmental organization. The pharmacy in the penal institution may also provide medications and pharmacy care to offenders assigned to that institution and residing at home or another housing location.

B. In the event a pharmacy located outside a penal institution intends to provide medications and pharmacy care on a contractual basis to offenders residing in, or assigned to, a penal institution, that pharmacy shall first obtain a penal pharmacy permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1236 (May 2012).

§1803. Permit Application Procedures

A. Application for Initial Issuance of Permit

1. The applicant for a penal pharmacy permit shall complete the application form supplied by the board and submit it with the required attachments and appropriate fees, as set forth in R.S. 37:1184, to the board.

2. Once received by the board, an application for the permit shall expire one year thereafter. Fees attached to an expired application shall be forfeited by the applicant and deposited by the board.

3. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

4. The applicant may be required to personally appear before the board or one of its committees prior to any decision on the permit application.

5. The applicant shall be required to submit to the criminal history record check process used by the board, unless waived by the board.

B. Application for Renewal of Permit

1. Without respect to the date of initial issuance, a penal pharmacy permit shall expire at midnight on December 31 of every year, unless surrendered, suspended, or revoked sooner in accordance with the Pharmacy Practice Act or these rules.

2. A penal pharmacy shall not operate with an expired permit.

3. The pharmacy shall complete the renewal application form supplied by the board and submit it with any required attachments and appropriate fees on or before the expiration date.

4. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

C. Application for Reinstatement of Expired Permit

1. The applicant shall complete an application form for this specific purpose supplied by the board and submit it with any required attachments and appropriate fees to the board.

2. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

3. An application for the reinstatement of a permit which has been expired:

a. less than one year may be approved by the board's administrative personnel;

b. more than one year but less than five years may be approved by a member of the board charged with such duties;

c. more than five years may only be approved by the full board following a hearing to determine whether the applicant is competent to operate the pharmacy and whether the reinstatement is in the public's best interest.

4. Applications requiring a reinstatement hearing shall be accompanied by payment of the administrative hearing fee authorized by R.S. 37:1184.

D. Application for Reinstatement of Suspended or Revoked Permit

1. The applicant shall complete an application form for this specific purpose supplied by the board and submit it with any required attachments and appropriate fees to the board.

2. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

3. The application may only be approved by the full board following a hearing to determine whether the applicant is competent to operate the pharmacy and whether the reinstatement is in the public's best interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1236 (May 2012).

§1805. Maintenance of Permit

A. A penal pharmacy permit is valid only for the entity to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a permit be valid for any premises other than the business location for which it is issued.

B. The owner of the pharmacy shall appoint a Louisiana-licensed pharmacist as the pharmacist-in-charge of the permit. The owner of the pharmacy and the pharmacist-in-charge shall comply with the provisions of §1105, Pharmacist-in-Charge of the board's rules.

C. A pharmacy contemplating permanent closure of its prescription department shall comply with the provisions of §1133, Pharmacy Closing Procedures of the board's rules.

D. A pharmacy contemplating a change in ownership shall comply with the provisions of §1135, Pharmacy Change of Ownership Procedures of the board's rules.

E. A pharmacy contemplating a change in location shall comply with the provisions of §1137, Pharmacy Change of Location Procedures of the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1236 (May 2012).

§1807. Prescription Department Requirements

A. The prescription department of a penal pharmacy shall comply with the minimum specifications identified in §1103, Prescription Department Requirements of the board's rules.

B. To ensure adequate access to medications and pharmacy care, the prescription department of a penal pharmacy shall be open for business a minimum of 10 hours per week, with said business hours posted at the pharmacy entrance.

C. A pharmacist shall be on duty at all times during regular operating hours of the pharmacy. When the pharmacy is closed, a pharmacist shall be available for emergency calls.

D. In the absence of a pharmacist, there shall be no access to the prescription department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1237 (May 2012).

§1809. Drug Distribution Control

A. The pharmacist-in-charge shall be responsible for the safe and efficient procurement, receipt, storage, distribution, control, accountability, and patient administration and management of all drugs used in the penal institution. The administration and staff of the institution shall cooperate with the pharmacist-in-charge in meeting drug control requirements in ordering and accounting for drugs.

1. The pharmacist-in-charge shall maintain a written policy and procedure manual for the safe and efficient distribution of drug products and delivery of pharmacy care. A copy of the current version of the manual shall be available for board inspection upon request.

2. The pharmacist-in-charge shall be responsible for making and keeping pharmacy records in compliance with the provisions of §1119-1129 of the board's rules.

3. The procurement, storage, security, and recordkeeping of controlled substances shall be in compliance with the provisions of Chapter 27, Controlled Dangerous Substances of the board's rules.

B. The pharmacy may utilize automated medication systems, but only in compliance with Chapter 12, Automated Medication Systems of the board's rules.

C. The penal pharmacy located within a penal institution may utilize drug cabinets located outside the prescription department of that institution to provide access to a limited inventory of medications when the prescription department is closed.

1. A drug cabinet is intended solely for the proper and safe storage of needed drugs when the pharmacy is closed, and such drugs shall be available for emergency use only by authorized institution personnel.

2. The drug cabinet shall be a securely constructed and locked enclosure located outside the prescription department ensuring access by authorized personnel only.

3. The pharmacist-in-charge shall be responsible for the selection and quantity of drugs to be maintained in the drug cabinet and shall maintain a perpetual inventory of any controlled dangerous substances stored therein. Medications shall be available in quantities sufficient only for immediate therapeutic needs.

4. Medications stored in a drug cabinet shall bear a legible label with the following minimum information:

a. drug name, strength, and dosage form;

b. name of manufacturer or distributor and their lot or batch number;

c. expiration date, in compliance with the relevant standards from the United States Pharmacopeia (USP);

d. for prepackaged medications, the pharmacy's lot number and initials of the pharmacist.

5. Documented orders from the medical practitioner and proof of use records shall be provided when any medications are removed from the drug cabinet.

6. The pharmacy shall inspect medications stored in a drug cabinet on a periodic basis, but no more than thirty days since the previous inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1237 (May 2012).

§1811. Definitions

A. As used in this Chapter, the following terms shall have the meaning ascribed to them in this Section.

Emergency Drug Kit (EDK)—a container holding designated emergency drugs which may be required to meet the immediate therapeutic needs of an offender.

Emergency Drugs—those drugs which may be required to meet the immediate therapeutic needs of an offender and which are not available from any other authorized source in sufficient time to prevent risk of harm to the offender because of a delay resulting from obtaining such medications from such other source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1237 (May 2012).

§1813. Emergency Drug Kit Permit

A. A penal pharmacy located outside a penal institution intending to use one or more emergency drug kits within the penal institution shall first obtain an EDK permit from the board.

B. Application for Initial Issuance of Permit

1. The penal pharmacy shall apply to the board for the permit.

2. The applicant shall complete the application form supplied by the board and submit it with the required attachments and appropriate fees, as set forth in R.S. 37:1184, to the board.

3. Once received by the board, an application for the permit shall expire one year thereafter. Fees attached to an expired application shall be forfeited by the applicant and deposited by the board.

4. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

C. Application for Renewal of Permit

1. Without respect to the date of initial issuance, an EDK permit shall expire at midnight on June 30 of every year, unless relinquished, surrendered, suspended, or revoked sooner in accordance with the Pharmacy Practice Act or these rules.

2. An EDK shall not be maintained or used with an expired permit.

3. The penal pharmacy shall complete the renewal application form supplied by the board and submit it with any required attachments and appropriate fees on or before the expiration date.

4. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

D. Application for Reinstatement of Expired Permit

1. The applicant shall complete an application form for this specific purpose supplied by the board and submit it with any required attachments and appropriate fees to the board.

2. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fees.

3. An application for the reinstatement of an EDK permit which has been expired:

a. less than one year may be approved by the board's administrative personnel;

b. more than one year but less than five years may be approved by a member of the board charged with such duties;

c. more than five years may only be approved by the full board following a hearing to determine whether the reinstatement of the permit is in the public's best interest.

4. Applications requiring a reinstatement hearing shall be accompanied by payment of the administrative hearing fee authorized by R.S. 37:1184.

E. Maintenance of Permit

1. EDK permits are specific to a penal institution and they are not transferable.

2. In the event multiple kits are required for a penal institution, a separate permit shall be required for each EDK.

3. The original EDK permit shall be displayed in the penal pharmacy supplying the EDK, and a copy of the permit shall be maintained in the room or area where the EDK is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1237 (May 2012).

§1815. Emergency Drug Kit Requirements

A. The EDK shall be tamper-evident, shall be maintained in a secure enclosure located within the penal institution, and shall be available for emergency use by authorized personnel only.

B. The EDK shall be clearly labeled to indicate it is an emergency drug kit, and further, the attached exterior label shall identify the inventory of contents as well as contact information for the penal pharmacy responsible for maintaining the kit.

C. Medications stored in an EDK shall bear a label with the following minimum information:

1. drug name;
2. dosage form;
3. drug strength;
4. name of manufacturer and/or distributor;
5. manufacturer's lot or batch number; and
6. expiration date, according to relevant standards

from the United States Pharmacopeia (USP).

D. The EDK shall be stored in a proper environment for the preservation of the drugs contained therein, in compliance with the relevant USP standards. In the event

federal or state laws or rules require storage outside the EDK for one or more drugs in the EDK, documentation shall be maintained with the EDK properly identifying this special storage requirement and the drug(s) affected.

E. The penal institution and penal pharmacy shall maintain policies and procedures to implement and maintain these requirements. These policies and procedures may be maintained in written or electronic format and shall be available for review by the board or its agents.

F. When an authorized prescriber issues an order for the administration of a drug contained within the EDK, the order and proof of use shall be delivered in written or electronic format to the penal pharmacy; further, such records shall contain the following minimum information:

1. name of offender;
2. drug name, strength, and quantity;
3. nature of the emergency;
4. time and date of administration;
5. name of prescriber authorizing the medication; and
6. name of person administering the medication.

G. The penal pharmacy shall inspect the EDK periodically, but in no event more than 30 days after the previous inspection. Proper documentation of these inspections, EDK inventory, and all records of use shall be maintained by the penal pharmacy and available for review by the board or its agents.

H. The EDK shall be available for inspection by the board or its agents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1238 (May 2012).

§1817. Drug Donations to Penal Pharmacies

A. A penal pharmacy may accept the donation of a prescription drug, except a controlled substance, previously dispensed to another patient provided the following procedures are satisfied:

1. the physical transfer of the donated drug shall be accomplished by an individual authorized to do so by the penal pharmacy;

2. an inventory list of the drugs being donated shall accompany the drugs received in the penal pharmacy; the list shall contain, at a minimum, the name and strength of the drug, the quantity received, and expiration date. The penal pharmacy receiving the donated drugs shall maintain this list as an acquisition record;

3. the penal pharmacy shall not knowingly accept the donation of any expired drugs. In the event expired drugs are received by a penal pharmacy, the pharmacist-in-charge shall destroy them as required by law;

4. the patient's name, prescription number, and any other identifying marks shall be obliterated from the packaging prior to its receipt in the penal pharmacy;

5. the drug name, strength, and expiration date shall remain on the medication package or label.

B. The pharmacist-in-charge of the penal pharmacy receiving donated drugs shall be responsible for determination of suitability of the drug product for reuse.

1. No product where integrity cannot be assured shall be accepted for re-dispensing by the pharmacist.

2. A re-dispensed prescription medication shall be assigned the expiration date stated on the package.

3. No product shall be re-dispensed more than one time.

C. Once accepted by the penal pharmacy, under no circumstances may the donated drugs be transferred to another location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1238 (May 2012).

§1819. Medication Use Procedures

A. The pharmacist shall review the practitioner's medical order or prescription prior to dispensing or otherwise provide access to the initial dose of the medication, except in cases of emergency.

B. All drugs dispensed by the pharmacy or held for administration to offenders at the institution shall be packaged in appropriate containers that comply with the relevant standards of the USP.

C. The compounding of drug preparations shall comply with the relevant standards of the USP, as well as the provisions of §2531-2537 of the board's rules.

D. All drugs dispensed by the pharmacy, intended for use within the penal institution, shall be labeled as to identify the offender's name and location as well as the drug name and strength. Further, compounded preparations shall include the expiration date or beyond-use date, initials of the preparer, and initials of the pharmacist performing the final check on the label.

E. Drugs dispensed by the penal pharmacy may be returned to that penal pharmacy for re-use, in accordance with good professional practice procedures, subject to the following limitation.

1. Drugs returned to the penal pharmacy for re-use shall not be further distributed to another entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1226.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:1239 (May 2012).

Malcolm J. Broussard
Executive Director

1205#005

RULE

Department of Health and Hospitals Board of Pharmacy

Pharmacist-in-Charge (LAC 46:LIII.1105)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended §1105, Pharmacist-in-Charge, of its rules. In particular, the amendment will impose a new two-year practice requirement on the qualifications required of a pharmacist to accept an appointment as the pharmacist-in-charge of a Louisiana-licensed pharmacy, and in addition, will require the personal presence of the pharmacist-in-charge for a minimum period of time.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 11. Pharmacies

Subchapter A. General Requirements

§1105. Pharmacist-in-Charge

A. The opportunity to accept an appointment as the pharmacist-in-charge (PIC) of a pharmacy is a professional privilege. The following requirements are attached to a PIC privilege.

1. The acquisition of the PIC privilege shall require:

a. possession of an active Louisiana pharmacist license;

b. active pharmacy practice for a minimum of two years under the jurisdiction of any board of pharmacy in the United States; and

c. the completion of the affidavit of responsibility and duties described below.

2. The PIC shall be present and practicing at the pharmacy for which he holds the PIC position no less than 20 hours per week during the pharmacy's ordinary course of business. In the event the pharmacy's normal hours of business are less than 20 hours per week the PIC shall be present and practicing at least 50 percent of the normal business hours.

B. An initial and renewal pharmacy permit application shall designate and identify the licensed pharmacist-in-charge.

C. Authority and Accountability. The pharmacist-in-charge shall be ultimately responsible for complete supervision, management, and compliance with all federal and state pharmacy laws and regulations pertaining to the practice of pharmacy of the entire prescription department. This responsibility necessarily includes accountability for any violation involving federal or state laws or regulations occurring within the prescription department supervised by a pharmacist-in-charge.

D. Policy and Procedure Manual. The pharmacist-in-charge shall be responsible for the implementation of policies and procedures regarding quality pharmacy services including drug control, distribution, patient compliance accountability, inspection, and record keeping.

E. Circumvention. It is a violation of the pharmacy permit for any person to subvert the authority of the pharmacist-in-charge by impeding the management of the prescription department in the compliance of federal and state pharmacy laws and regulations.

F. Records. The pharmacist-in-charge shall be responsible for the proper maintenance of all prescription records. This necessarily includes electronic prescription records and the system's compliance and capacity to produce the required records.

G. Recall. The pharmacist-in-charge shall be responsible for the implementation of a recall procedure that can be readily activated to assure patient safety.

H. Discontinued and Outdated Drugs. The pharmacist-in-charge shall be responsible for the implementation of policies and procedures to ensure that discontinued or outdated drugs, or containers with worn, illegible, or missing labels are withdrawn from the pharmacy inventory.

I. Change of Pharmacist-in-Charge. Written notice to the board shall be required when the pharmacist-in-charge designation for a pharmacy has changed.

1. The permit holder shall notify the board within 10 days of the prior pharmacist-in-charge's departure date. The permit holder shall designate a new pharmacist-in-charge within 10 days of the departure of the prior pharmacist-in-charge.

2. The new pharmacist-in-charge shall afford the board written notice of his newly designated pharmacist-in-charge status within 10 days of the departure of the prior pharmacist-in-charge.

3. A pharmacist-in-charge who voluntarily leaves a pharmacy shall give written notice to the board and the owner of the permit at least 10 days prior to this voluntary departure, unless replaced in a shorter period of time.

J. Affidavit of Responsibility and Duties. The designated pharmacist-in-charge shall sign an affidavit on a form supplied by the board indicating his understanding and acceptance of the duties and responsibilities of a pharmacist-in-charge. This notarized document shall be submitted to the board for inclusion in the pharmacy's record in the board office.

K. A pharmacist shall not hold a pharmacist-in-charge position at more than one pharmacy permit, unless approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:1310 (October 1997), amended LR 29:2088 (October 2003), effective January 1, 2004, LR 38:1239 (May 2012).

Malcolm J. Broussard
Executive Director

1205#006

RULE

Department of Health and Hospitals Board of Pharmacy

Remote Processing of Medical Orders (LAC 46:LIII.1143 and 1525)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended §1143, Remote Processing of Medical Orders or Prescription Drug Orders, and to repeal §1525, Remote Processing of Medical Orders, of its rules. In particular, the amendments will permit hospital pharmacies to engage in the remote processing of medical orders at any time during the day.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 11. Pharmacies

Subchapter D. Off-Site Services

§1143. Remote Processing of Medical Orders or Prescription Drug Orders

A. - A.1.b. ...

2. A contract or agreement for remote processing services shall not relieve the on-site pharmacy from employing or contracting with a pharmacist to provide routine pharmacy services. The activities authorized by this section are intended to supplement pharmacy services and are not intended to eliminate the need for an on-site pharmacy or pharmacist.

B. - C.2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1132 (June 2007), amended LR 38:1240 (May 2012).

Chapter 15. Hospital Pharmacy

§1525. Remote Processing of Medical Orders

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1132 (June 2007), repealed LR 38:1240 (May 2012).

Malcolm J. Broussard
Executive Director

1205#007

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services Small Rural Hospitals—Upper Payment Limit (LAC 50:V.1125 and 1127)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.1125 and §1127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 1. Inpatient Hospital Services

Chapter 11. Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§1125. Small Rural Hospitals

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement for inpatient acute care services rendered by small rural hospitals shall be up to the Medicare upper payment limits for inpatient hospital services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1240 (May 2012).

§1127. Inpatient Psychiatric Hospital Services

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement paid for psychiatric services rendered by distinct part psychiatric units in small rural hospitals shall be up to the Medicare inpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1240 (May 2012).

Bruce D. Greenstein
Secretary

1205#050

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
State Hospitals
Supplemental Payments
(LAC 50:V.551)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:V.551 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 1. Inpatient Hospital Services

Chapter 5. State Hospitals

Subchapter B. Reimbursement Methodology

§551. Acute Care Hospitals

A. Inpatient hospital services rendered by state-owned acute care hospitals shall be reimbursed at allowable costs and shall not be subject to per discharge or per diem limits.

B. Effective for dates of service on or after October 16, 2010, a quarterly supplemental payment up to the Medicare upper payment limits will be issued to qualifying state-owned hospitals for inpatient acute care services rendered.

C. Qualifying Criteria for Supplemental Payment. The state-owned acute care hospitals must be located in DHH Administrative Region 8 (Monroe).

D. Effective for dates of service on or after October 16, 2010, Medicaid rates paid to state-owned acute care hospitals that do not meet the qualifying criteria for the supplemental payment shall be adjusted to 60 percent of allowable Medicaid costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1241 (May 2012).

Bruce D. Greenstein
Secretary

1205#051

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities
Per Diem Rate Reduction
(LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20005. Rate Determination

[Formerly LAC 50:VII.1305]

A. - H. ...

I. Effective for dates of service on or after July 1, 2012, the per diem rate paid to non-state nursing facilities, excluding the provider fee, shall be reduced by \$32.37 of the rate in effect on June 30, 2012 until such time that the rate is rebased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), LR 37:1174 (April 2011), LR 37:2631 (September 2011), LR 38:1241 (May 2012).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Bruce D. Greenstein
Secretary

1205#052

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facility Minimum Licensing Standards
Nurse Aide Training and Competency Evaluation Program
(LAC 48:I.Chapter 100)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.Chapter 100 in the Medical Assistance Program as authorized by R.S.

36:254. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 100. Nurse Aide Training and Competency

Evaluation Program

Subchapter A. General Provisions

§10001. Definitions

* * *

Abuse—

1. - 2.c. ...
3. the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in or which could reasonably be expected to result in physical or mental harm, pain or mental anguish. Lack of awareness or knowledge by the victim of the act which produced or which could have reasonably been expected to produce physical or mental injury or harm shall not be a defense to the charge of abuse.

Approved Setting—a provider entity licensed and regulated by the department, a school serving children with special needs, or a correctional facility in which the certified nurse aide performs nursing or nursing-related duties.

Certified Nurse Aide—an individual who has completed a nurse aide training and competency evaluation program (NATCEP) approved by the state as meeting the requirements of 42 Code of Federal Regulations (CFR) 483.151-483.154, or has been determined competent as provided in 42 CFR 483.150(a) and (b), and is listed as certified and in good standing on Louisiana's nurse aide registry.

* * *

Trainee—an individual who is at least 16 years old and is enrolled in a nurse aide training and competency evaluation program, whether at a nursing facility or educational facility, with a goal of becoming a certified nurse aide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2074 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1242 (May 2012).

Subchapter B. Training and Competency Requirements

§10011. General Provisions

A. All nurse aide training and competency evaluation programs shall be approved by the department.

B. - B.3. ...

C. Nursing facilities may provide the classroom and clinical training portion of the program but the competency evaluation shall be administered by an entity approved by the department.

D. Each training and competency evaluation program shall:

1. - 4. ...

E. Clinical instruction shall be conducted in a nursing home or a hospital-based skilled nursing facility unit.

F. Training programs that do not meet the minimum standards and cannot provide an acceptable plan for correcting deficiencies shall be eliminated from participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1242 (May 2012).

§10013. Certification Criteria for Nursing Professionals, Nursing Students and Military Personnel

A. Individuals applying for nurse aide certification shall complete the application form designated by the department and submit documentation as deemed necessary by the department to determine eligibility.

B. Registered nurses (RNs) and licensed practical nurses (LPNs) who have completed online courses shall provide an official transcript to determine eligibility to test.

1. Repealed.

C. Registered nurse (RN) and licensed practical nurse (LPN) students shall provide an official transcript and any other documentation needed to determine eligibility.

D. Registered nurses (RNs) and licensed practical nurses (LPNs) who trained in other countries, and are requesting certification to the registry, shall be required to test.

E. RN and LPN students who have completed a nursing course, or have completed sufficient course content to meet eligibility criteria for certification, shall be required to test if their request for certification is received within three years of taking the nursing course.

F. An individual who trained in another state but did not test, shall test and certify to the registry in that state before transferring to Louisiana, or shall retrain and test in Louisiana.

G. Military personnel shall provide a copy of their military transcript and any other documentation needed to determine eligibility.

H. Licensed nurses on probation or suspended status shall provide documentation as deemed necessary by the department to determine eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1242 (May 2012).

§10015. Training Curriculum/Program Approval

A. Training Curriculum

1. Providers applying to have a training program after the effective date of this Rule shall use one of the state approved curriculums or any subsequent editions issued by the publisher or any future state approved curriculums.

2. The curriculum shall be a minimum of 80 hours in length, which includes 40 classroom hours and 40 clinical hours.

3. Each additional unit objective added to the approved curriculum, above the minimum 80 hours, shall be behaviorally-stated for each topic of instruction. Each

objective shall state performance criteria which are measurable and shall serve as a basis for the competency evaluation. a. The unit objectives shall be reviewed with the trainees at the beginning of each unit so each trainee will know what is expected of him/her in each part of the training.

4. - 5. Repealed.

B. Curriculum Goals and Content

1. The goal of the nurse aide training and competency evaluation program is the provision of quality services to residents by nurse aides who are able to:

a. communicate and interact competently on a one-to-one basis with residents as part of the team implementing resident care;

b. demonstrate sensitivity to the emotional, social and mental health needs of resident's through skillful, directed interactions;

i. Repealed.

c. assist residents in attaining and maintaining functional independence;

d. exhibit behavior to support and promote the rights of residents; and

e. demonstrate proficiency in the skills needed to support the assessment of the health, physical condition and well-being of residents.

2. Facility and non-facility based training programs shall provide at least 16 hours of instruction prior to a trainee's direct involvement with a resident. The 16 hours of instruction shall be devoted to areas listed in Paragraph C of this Section.

C. The training program shall be conducted to ensure that each nurse aide, at a minimum, is able to demonstrate competencies in the following areas:

1. basic nursing skills including, but not limited to:

a. bed-making;

b. taking vital signs;

c. measuring height and weight;

d. caring for the resident's environment;

e. measuring fluid and nutrient intake and output;

f. assisting in the provision of proper nutritional care;

g. ambulating and transferring residents;

h. using body mechanics;

i. maintaining infection control and safety standards;

j. understanding the protocols in facility policy for the performance of and attaining/maintaining proficiency in basic cardio-pulmonary resuscitation including one hour of in-service training that shall be provided by the facility annually;

k. caring for residents when death is imminent;

l. recognizing abnormal signs and symptoms of common diseases and conditions; and

m. caring for residents suffering from Alzheimer's disease or dementia;

2. personal care skills including, but not limited to:

a. bathing, including mouth care;

b. grooming and dressing;

c. toileting;

d. assisting with feeding and hydration; and

e. skin care;

3. mental health and social service needs including, but not limited to:

a. modifying his/her own behavior in response to a resident's behavior;

b. identifying developmental tasks associated with the aging process and using task analysis to increase independence;

c. providing training in and the opportunity for self-care according to a resident's capabilities;

d. demonstrating principles of behavior modification by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated;

e. demonstrating skills which support age-appropriate behavior by allowing the resident to make personal choices;

f. providing and reinforcing behavior consistent with maintaining a resident's dignity; and

g. utilizing a resident's family as a source of emotional support;

4. basic restorative services including, but not limited to:

a. the use of assistive devices in ambulation, eating and dressing;

b. maintenance of range of motion;

c. proper turning and positioning in a bed and a chair;

d. transferring a resident;

e. bowel and bladder training; and

f. care and use of prosthetic devices, such as hearing aids, artificial eyes or artificial limbs;

5. maintaining a resident's rights including, but not limited to:

a. assisting a resident to vote;

b. providing privacy and maintaining confidentiality;

c. allowing the resident to make personal choices to accommodate individual needs;

d. giving assistance in resolving grievances;

e. providing needed assistance in getting to, and participating in, resident and family groups and other activities;

f. maintaining reasonable care of a resident's personal possessions;

g. providing care which frees the resident from abuse, mistreatment or neglect and reporting any instances of poor care to appropriate facility staff; and

h. maintaining the resident's environment and care so as to minimize the need for physical and chemical restraints;

6. communication and interpersonal skills;

7. safety and emergency procedures;

8. promoting residents' independence; and

9. the Heimlich maneuver.

D. Program Approval

1. All training programs shall meet the guidelines established by the department.

2. To get a nurse aide training program approved, the facility or school shall submit to the department the application, completed in its entirety, which denotes the state approved curriculum that shall be used and all required documentation stipulated in the nurse aide training packet.

3. All schools applying for approval shall identify the physical locations used for classroom instruction and for the clinical experience. Non-facility based programs shall also submit clinical contracts which meet the guidelines established by the department.

4. Approval to provide nurse aide training is granted specifically for the provider who submitted the application. There is no provision for subcontracting the training program.

5. If an approved program ceases to provide a nurse aide training and competency evaluation program for a two year period, the program shall be closed. The provider must reapply if they wish to provide training at a later date.

6. All approved providers shall maintain a current address, telephone and fax number, and e-mail address. The provider shall report to the department any changes in this information or other aspects of the approved program within five working days.

E. - F.3. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Financing LR 38:1242 (May 2012).

§10017. Coordinators, Instructors and Trainers

A. Program Coordinator. Every nurse aide training program shall have a program coordinator who provides general supervision of the training received by the nurse aide trainees.

1. The program coordinator shall be a registered nurse (RN) and shall have the following experience and qualifications:

a. - b. ...

2. The program coordinator shall supervise no more than two nurse aide training programs simultaneously and shall be on the premises where the program is being conducted for at least 50 percent of the duration of the program.

B. Instructors. Instructors shall be RN's or LPN's and shall hold a current Louisiana nursing license. Licensed practical (vocational) nurses, under the general supervision of the coordinator, may provide classroom and clinical skills instruction and supervision of trainees if they have two years of experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

1. Such experience is normally obtained through employment in:

- a. a nursing facility;
- b. a geriatrics department;
- c. a chronic care hospital; or
- d. other long-term care setting.

e. - m. Repealed.

2. Experience in resident care, supervision and staff education is preferred.

3. The ratio of instructors to trainees in clinical training shall not exceed 1:10 and the ratio of instructors to trainees in the classroom shall not exceed 1:23.

C. Program Trainers. Qualified resource personnel from the health field may participate as program trainers as needed for discussion or demonstration of specialized care procedures.

1. Qualified resource personnel shall have a minimum of one year of experience in their field and shall be licensed, registered and/or certified, if applicable, and may include:

- a. registered nurses;
- b. licensed practical/vocational nurses;
- c. pharmacists;
- d. dietitians;
- e. social workers;
- f. sanitarians;
- g. fire safety experts;
- h. nursing home administrators;
- i. gerontologists;
- j. psychologists;
- k. physical and occupational therapists;
- l. activities specialists; and
- m. speech/language/hearing therapists.

2. All program trainers shall have a minimum of one year of current experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

3. The training program may utilize other persons such as residents, experienced aides and ombudsmen as resource personnel if these persons are needed to meet the planned program objectives or a specific unit of training.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2076 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1244 (May 2012).

§10019. Training Program Responsibilities

A. Each nurse aide trainee shall be at least 16 years old.

1. - 2. Repealed.

B. Each nurse aide trainee shall be clearly identified as a trainee at all times during clinical training. Identification shall be recognizable to residents, family members, visitors and staff.

C. Each nurse aide training program shall provide all trainees with an orientation of the clinical training site of at least four hours that is not included in the required 80 hours of core curriculum. The orientation shall include but is not limited to:

1. an explanation of the facility's organizational structure;
2. the facility's policies and procedures;
3. discussion of the facility's philosophy of care;
4. description of the resident population;
5. employee rules; and
6. what constitutes abuse, neglect, and misappropriation, including the consequences imposed if found guilty of such.

D. The facility/school shall not accept a nurse aide trainee into a training program until the facility or school conducts a statewide criminal history background check which includes a check of the national sex offender public registry.

1. A trainee shall not be eligible to participate in a training program if convicted or found guilty by a court of law of:

- a. abusing, neglecting or mistreating the elderly or infirm as defined by R.S. 40:2009.20;
- b. misappropriating a resident's property; or

c. has not had a finding of abuse, neglect, mistreatment or misappropriation of a resident's property placed on the Nurse Aide Registry or the Direct Service Worker Registry.

2. If a criminal history background check cannot be legally obtained by a training program, trainees may obtain a certified copy of their criminal history from the Louisiana State Police by requesting that a "right to review" be conducted.

E. Trainees shall not be prohibited from completing training due to:

a. criminal history that is not related to abuse, neglect or misappropriation; or

b. the Louisiana State Police not being able to complete a criminal history check due to the age of the trainee.

F. For facility-based training programs, the facility shall assure that trainees do not perform any care and services for which they have not trained and been found proficient by the instructor. Trainees providing services to residents shall be under the general supervision of a licensed nurse approved to work in a nurse aide training program.

1. Trainees enrolled in facility-based training programs, shall complete training and test within 60 days of hire.

2. Nursing facilities may provide the classroom instruction and clinical instruction but the competency evaluation shall be administered by an entity approved by the department.

3. A class roster as well as the beginning and ending dates of each training class shall be available for review by the department at all times. This shall be available for both classroom and clinical instruction.

G. Providers shall issue a certificate of completion to nurse aide trainees who successfully complete a training and competency evaluation program. The certificate shall contain the following:

1. the name of the Nurse Aide Training Program or School;

2. the date the program began;

3. the date the program ended;

4. the notation that this is a "DHH Approved Program";

5. the name of the instructor; and

6. the signature of the coordinator and the date signed

H. Any entity responsible for the nurse aide training and competency evaluation program shall report to the Nurse Aide Registry within 30 days the names of all individuals who have satisfactorily passed the competency evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2077 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1244 (May 2012).

§10021. Competency Evaluation

A. Written or oral examinations shall be provided by an entity or organization approved by the department. The examination shall reflect the content and emphasis of the training program and shall be developed in accordance with accepted educational principles.

B. The written evaluation component shall be given in English unless the aide will be working in a facility in which the predominant language is something other than English. In this case, the examination may be taken in the written predominant language used in the facility, dependent upon the availability of a translator who shall maintain the integrity of the examination.

C. A substitute examination, including an oral component, shall be developed for those nurse aides with limited literacy skills. This examination shall contain all of the content that is included in the written examination and shall include a written reading comprehension portion that shall determine competency to read job-related information.

D. Trainees of non-facility based programs shall take the competency evaluation (through skills demonstration and either written or oral examination) within 30 days after completion of the training program.

E. Trainees shall be provided a maximum of three opportunities within one year following completion of the training program to successfully complete the competency evaluation.

1. - 2. Repealed.

F. The evaluation program shall be developed and conducted to ensure that each nurse aide, at a minimum, is able to demonstrate competencies listed in §10015.C.

1. - 7. Repealed.

G. For the skills training component of the evaluation program, each nurse aide training program shall develop a performance record of duties/skills taught which shall verify proficiency attained.

1. The performance record shall consist of, at a minimum:

a. a listing of the duties/skills expected to be learned in the program; and

b. space to note satisfactory or unsatisfactory performance of each task including:

i. the date of the performance; and

ii. the name of the instructor supervising the performance.

2. At the completion of the nurse aide training program, the nurse aide and his/her employer shall receive a copy of this record. If the individual did not successfully perform all duties/skills on this performance record, he/she shall receive training for all duties and skills not satisfactorily performed until satisfactory performance is confirmed.

H. The skills demonstration of the competency evaluation program shall consist of a minimum performance of five tasks, all of which are included in the performance record. These five tasks shall be selected for each aide from a pool of evaluation tasks which have been ranked according to degree of difficulty. A random selection of tasks shall be made with at least one task from each degree of difficulty being selected. Such evaluation tasks may include, but are not limited to:

1. making an occupied bed;

2. taking and recording a resident's blood pressure, temperature, pulse and respirations;

3. orienting a new resident to the facility;

4. performing a range of motion exercises;

5. giving a bed bath;

6. positioning a resident on his/her side; and
7. responding to a demented resident who is calling out, yelling or indicating distress or anger.

I. Task-related evaluation items shall be developed to evaluate communication and psychosocial skills. The skills demonstration portion of the competency evaluation may be held in either a nursing facility or in a laboratory equipped for this purpose.

J. In the case of nursing facilities that provide their own training programs, the facility shall contact an approved entity to administer competency evaluation. The clinical portion of the competency evaluation shall be given in a nursing facility, but shall be administered by personnel not associated with the facility. The competency evaluation may be proctored by facility personnel if the competency evaluation is:

1. secured from tampering;
2. standardized;
3. scored by a testing, educational or other organization approved by the state or scored by the state itself; and
4. not administered or scored by facility personnel.

K. The examiner conducting the clinical competency evaluation for any individual trainee shall be approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2077 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1245 (May 2012).

§10023. Compliance with Federal and State Regulations

A. ...

1. - 2. Repealed.

B. Programs not meeting minimum requirements may be terminated if the program does not provide an acceptable plan for correcting deficiencies.

C. Programs not accessible or refusing to permit unannounced visits by the department shall be terminated.

D. A program that has not conducted training or certified trainees to the registry within a two year period shall be closed.

E. Operational Requirements

1. In order to be considered operational and retain approval to conduct a training program, providers shall have at least one employee on duty at the business location during the hours of operation reported on the training program application submitted to the DHH Health Standards Section.

2. All nurse aide training providers (facility based and non-facility based) shall maintain a current, operational telephone number, fax number and e-mail address and shall keep the department informed of any changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Financing, LR 38:1246 (May 2012).

§10025. Nurse Aide Responsibilities

A. A nurse aide shall be responsible for notifying the registry of current contact information such as address, telephone number, and e-mail address.

B. A nurse aide shall perform at least eight hours of nursing or nursing-related services in an approved setting during every consecutive 24-month period for pay after completion of a training and competency evaluation program to maintain certification.

C. If a nurse aide does not have proof of the required eight hours of paid employment in an approved setting in a 24-month period needed for recertification, he/she may retest with the two years immediately following the expiration. If the nurse aide fails to retest within the allotted time period, they shall retrain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1246 (May 2012).

Subchapter C. Nurse Aide Registry

§10033. General Provisions

A. - A.7. ...

8. state certification number;

9. - 9.c. ...

d. an accurate summary of findings only after actions on findings are final;

10. current e-mail address; and

11. status of certification, which includes the:

- a. certified date;
- b. recertified date; and
- c. expiration date.

B. The registry shall renew certification in accordance with the provisions of §10025 of this Chapter.

C. Employers shall use the registry to determine if a prospective hire is a certified nurse aide and if there is a finding placed on the registry that he/she has abused or neglected a resident or misappropriated a resident's property or funds.

D. If there is a final and binding administrative decision to place a finding on the registry or if there is a final conviction, guilty plea or no contest plea to a crime(s) by a nurse aide against the elderly, infirmed or a nursing facility resident, the department shall place the adverse finding on the registry. Record of the occurrence and associated findings shall remain permanently on the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1246 (May 2012).

§10035. Certification by Reciprocity

A. Nurse aides may become certified by reciprocity from other states. Applicants shall, at a minimum, submit to the Nurse Aide Registry the following information either on forms or via electronic submissions approved by the department:

1. - 4. ...

5. his/her former place of employment;
6. the date of employment and termination;
7. his/her e-mail address;

8. a copy of his/her social security card; and

9. a copy of his/her official Louisiana identification, such as a driver's license, identification card, etc.

B. After verification of certification in the other state, the registry shall certify the aide in Louisiana. Likewise, the registry will be responsible for granting reciprocity to other states.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1246 (May 2012).

Subchapter D. Provider Participation

§10045. Employer Responsibilities

A. A person shall not be employed as a nurse aide or nurse aide trainee by a nursing facility or hospital based SNF unit for more than 60 days unless he/she has satisfactorily completed an approved training and competency evaluation program.

B. A person shall not be employed as a nurse aide or nurse aide trainee if there is a final administrative or judicial court decision that the nurse aide or trainee has:

1. committed abuse, neglect or mistreatment of the elderly, infirm or nursing facility resident;
2. misappropriated a resident's property; or
3. as specified in R.S. 40:1300.53.

C. The provider shall complete and send the appropriate form or approved electronic submission to the registry to verify employment or termination of a certified nurse aide. Failure to send notification to the registry within five working days of employment or termination may result in further adverse action against the provider. The provider shall maintain documentation to verify compliance.

D. All facilities shall continue to provide on-going training on a routine basis in groups and, as necessary in specific situations, on a one-to-one basis.

1. Each nurse aide shall receive and be compensated for 12 hours of on-going training per year.

2. Training may be conducted in the unit as long as it is:

- a. directed toward skills improvement;
- b. provided by appropriately trained staff; and
- c. documented.

E. When a change of ownership (CHOW) occurs, the new owner or the administrator/designee is responsible for ensuring that all reporting of employment and termination to the registry is current. In the event that a request for verification of work history is received after the CHOW occurs, the current owner is responsible for compliance.

F. The facility administrator/designee is responsible for reporting employment and termination to the registry for nurse aides employed by staffing agencies. This shall be done at least monthly.

G. No nurse aide who is employed by, or who has received an offer of employment from a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program.

H. If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide competency evaluation program, the state shall provide for the reimbursement of costs incurred in completing the

program on a pro rata basis during the period in which the individual is employed as a nurse aide.

I. If a training program is facility based, the Administrator or their designee shall reconcile with the nurse aide registry at least monthly, their CNA's that are currently employed or have been terminated. Accuracy of the information held by the registry is dependent upon the information received from the facility. Failure to maintain current data shall result in adverse action by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1247 (May 2012).

Subchapter E. Violations

§10055. Disqualification of Training Programs

A. The department prohibits nursing facilities from offering nurse aide training programs when the facilities have:

1. - 2. ...

B. The department may prohibit nursing facilities from offering nurse aide training programs when the facilities have been sanctioned with:

1. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended LR 38:1247 (May 2012).

§10057. Allegations of Nurse Aide Wrong-Doing

A. The department, through its Division of Administrative Law or successor entity, has provided for a process for the review and investigation of all allegations of wrong-doing by nurse aides employed in nursing facilities. Certified nurse aides and nurse aide trainees must not:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1247 (May 2012).

§10059. Notice of Violation

A. When there are substantiated charges against the nurse aide, either through oral or written evidence, the department shall notify the individual(s) implicated in the investigation of the following information by certified mail:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1247 (May 2012).

§10061. Informal Dispute Resolution

A. ...

1. The nurse aide may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of

the agency's notice of violation. The request for an IDR must be made to the department in writing.

2. - 2.c. ...

3. An IDR meeting shall be arranged within 20 days of the request.

4. During the IDR, the nurse aide shall be afforded the opportunity to:

a. - e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2080 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1247 (May 2012).

Subchapter F. Administrative Hearings

§10071. General Provisions

A. Within 30 calendar days after receipt of the department's notice of violation or the notice of the results of an informal dispute resolution, the nurse aide may request an administrative hearing.

1. The request for an administrative hearing must be made in writing to the department's Division of Administrative Law or successor entity.

2. The request shall contain a statement setting forth the specific charges with which the nurse aide disagrees and the reasons for this disagreement.

3. Unless a timely and proper request is received by the Division of Administrative Law or successor entity, the findings of the department shall be considered a final and binding administrative determination.

a. Notification of the finding of abuse, neglect and/or misappropriation shall then be sent to the Nurse Aide Registry to be recorded.

B. When an administrative hearing is scheduled, the Division of Administrative Law or successor entity shall notify the nurse aide, his/her representative and the agency representative in writing.

1. - 1.c. ...

C. The administrative hearing shall be conducted by an administrative law judge from the Division of Administrative Law or successor entity as authorized by the Administrative Procedure Act, R.S. 49:950 et seq., and according to the following procedures.

1. ...

2. A transcript shall be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of the copy of the transcript.

3. - 7. ...

a. The burden of producing evidence to substantiate the written allegation(s) shall be on the department and the provider of services.

C.7.b. - E.2.d. ...

F. The written proposed decision is provided to the secretary of the department. The secretary may:

1. - 3. ...

a. If the proposed decision is remanded, the administrative law judge shall submit a new proposed decision to the secretary.

G. The decision of the secretary shall be final and binding upon adoption, subject only to judicial review by the

courts. A copy of the decision shall be mailed to the nurse aide at his/her last known address and to any representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2080 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1248 (May 2012).

§10073. Preliminary Conferences

A. Although not specifically required, the Division of Administrative Law or successor entity may schedule a preliminary conference. The purposes of the preliminary conference include, but are not limited to:

1. - 6. ...

B. When the Division of Administrative Law or successor entity schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. - C.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2081 (November 2006); amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1248 (May 2012).

§10079. Failure to Appear at Administrative Hearings

A. If a nurse aide fails to appear at an administrative hearing, a notice/letter of abandonment may be issued by the Division of Administrative Law or successor entity dismissing the appeal. A copy of the notice shall be mailed to each party.

B. Any dismissal may be rescinded upon order of the Division of Administrative Law or successor entity if the nurse aide:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2081 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1248 (May 2012).

Subchapter G. Medication Attendant Certified

§10081. General Provisions

A. The Department of Health and Hospitals (DHH) establishes provisions for the use of medication attendants certified in licensed nursing facilities. The department shall maintain a registry of individuals who have, at a minimum, successfully completed a state-approved medication attendant certified training course and competency evaluation, and criminal background check.

B. The medication attendant certified registry shall contain the following items:

1. a list of individuals who have successfully completed a medication attendant certified training curriculum and competency evaluation. Each individual listed shall have the following information maintained on the registry:

a. - i.iv. ...

v. an accurate summary of findings after action on findings are final and after any appeal is ruled upon or the deadline for filing an appeal has expired;

j. information relative to training and registry status which will be available through procedures established by the department; and

k. e-mail address.

C. Employers shall use the registry to determine if a prospective hire is a medication attendant certified and if there is a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds.

D. A certificate holder shall notify the department within 30 days after changing his or her address, telephone number, e-mail address or name.

E. A medication attendant certified or his or her employer, if aware, shall immediately notify the department of any arrest in any state.

F. A person who holds a valid license, registration or certificate as a medication attendant issued by another state shall also be certified in Louisiana if the transferring state's training program is at least 100 hours or more and the applicant passes the State competency examination.

1. The applicant shall submit a request for reciprocity to the Registry.

2. The application shall include a current copy of the rules of the other state governing its licensing and regulation of medication aides, a copy of the legal authority (law, act, code, or other) for the state's licensing program, and a certified copy of the license or certificate for which the reciprocal certificate is requested.

3. The department shall contact the issuing agency to verify the applicant's status with the agency.

G. When issued, an initial certificate shall be valid for 12 months from the date of issue. The registry will renew the certificate if:

1. - 2. ...

H. The department shall deny renewal of the certificate of a medication attendant certified who is in violation of this Chapter at the time of the application renewal.

I. A person whose certificate has expired shall not engage in activities that require a certificate until the certificate has been renewed.

J. A medication attendant certified shall function under the direct supervision of a licensed nurse on duty at the nursing facility. A certificate holder must:

1. function in accordance with applicable laws and rules relating to administration of medication and operation of a nursing facility; and

2. comply with the department's rules applicable to personnel used in a nursing facility.

K. Persons employed as medication attendants certified in a nursing facility shall comply with the requirements relating to nurse aides as set forth in the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, the department's rule governing the Standards for Payment for Nursing Homes and Minimum Licensure Standards for Nursing Homes or subsequent amendments. Requirements are met if the individual is:

K.1. - L. ...

M. Nursing facilities may not count the MAC in required nursing hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1413 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1248 (May 2012).

§10082. General Requirements

A. Prior to application for a certificate under this Chapter, all persons shall:

A.1. - B. ...

1. holds a current certificate issued by the department under this Chapter and acts under the supervision of a person who holds a current license under state law which authorizes the licensee to administer medication; or

2. ...

C. All medication attendant training and competency evaluation programs must be approved by the department.

D. Each training and competency evaluation program shall:

1. maintain qualified, approved registered nurses and licensed practical nurses for classroom and clinical instruction;

2. protect the integrity of the competency evaluations by keeping them secure;

3. utilize a pass rate of at least 80 percent for each individual student; and

4. assure the curriculum meets state requirements.

E. Clinical instruction shall be conducted in an approved nursing facility with a ratio of no more than 5:1 under the direct supervision of the instructor.

F. Training programs that do not meet the minimum standards and cannot provide an acceptable plan for correcting deficiencies shall be eliminated from participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1414 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1249 (May 2012).

§10083. Trainee Responsibilities

A. Each medication attendant trainee shall be clearly identified as a trainee during all clinical portions of the training. Identification should be recognizable to residents, family members, visitors and staff.

B. Trainees shall take the competency evaluation (through skills demonstration and written examination) within 30 days after completion of the training program. Trainees will be given a maximum of two opportunities within 90 days following completion of the training program to successfully complete the competency evaluation program.

C. If a trainee fails to successfully complete the competency evaluation program, he or she shall re-enroll in a training program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1415 (July 2008), amended LR 38:1249 (May 2012).

§10084. Training Curriculum

A. - C. ...

1. The core curriculum shall be a minimum of 100 hours in length with a minimum of 40 clinical hours.

2. Each unit objective shall be behaviorally-stated for each topic of instruction. Each objective must state performance criteria which are measurable and will serve as the basis for the competency evaluation.

D. Minimum Curriculum. The training program shall be developed and conducted to ensure that each medication attendant, at a minimum, is able to demonstrate competency in the following areas including, but not limited to:

1.- 30. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1415 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1250 (May 2012).

§10085. Competency Evaluation

A. A competency evaluation shall be developed and conducted to ensure that each trainee, at a minimum, is able to demonstrate competencies taught in each part of the training curriculum.

B. Written examinations shall be provided by the training entity or organizations approved by the department. The examination shall reflect the content and emphasis of the training curriculum and will be developed in accordance with accepted educational principles.

C. The entity responsible for the training and competency evaluation shall report to the registry the names of all individuals who have satisfactorily completed the curriculum after the training is completed. Within 15 days after a medication attendant certified has successfully completed the training and competency evaluation, the training entity shall notify the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1416 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1250 (May 2012).

§10086. Authorized Duties

A. The medication attendant certified may perform certain duties and functions under the direct supervision of a licensed nurse. These authorized duties shall apply to medication attendant trainees under the supervision of the clinical instructor. The ratio of medication attendants certified to licensed nurses shall not exceed two medication attendants to one licensed nurse at any given time.

B. - B.12. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1416 (July 2008), amended LR 38:1250 (May 2012).

§10088. Provider Participation and Responsibilities

A. A nursing facility shall apply to the department to utilize medication attendants certified. Upon receipt of a facility's application, the department shall review the facility's compliance history.

B. If a facility is non-compliant with program regulations, the department shall take into consideration the findings that resulted in the facility's noncompliance before making a determination whether or not to allow the facility to utilize medication attendants certified. Emphasis shall be placed on deficiencies cited in the area of medication administration such as significant medication errors, medication error rates and repeat deficiencies.

C. The department may deny a facility's request to use medication attendants if it is determined that, based upon the compliance history, the safety and well-being of residents would be jeopardized. If the facility is denied participation, the facility may ask for a reconsideration and review of the circumstances which contributed to the denial.

D. The following information shall be provided prior to acceptance in the program:

1. - 8. ...

E. A facility's application that is not complete within 90 days of receipt by the department shall be closed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1417 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1250 (May 2012).

§10089. Allegations of Medication Attendant Certified

Wrong-Doing

A. The department, through its Division of Administrative Law or successor entity, has provided for a process of the review and investigation of all allegations of resident abuse, neglect or misappropriation of residents' property or funds by medication attendants certified.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1417 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1250 (May 2012).

§10090. Suspension, Revocation or Non-Renewal

A. The department may revoke, suspend or refuse to renew a certificate or reprimand a certificate holder for a violation of this Chapter.

B. - B.3. ...

C. Prior to institution of formal proceedings to revoke or suspend a permit, the department shall give written notice to the certificate holder of the facts or conduct alleged to warrant revocation, suspension or rescission. The certificate holder shall be given an opportunity to show compliance with all requirements of this Chapter.

D. If denial, revocation or suspension of a certificate is proposed, the department shall give written notice that the certificate holder must submit a written request for a formal hearing within 30 days of receipt of the notice. If not, the right to a hearing shall be waived and the certificate shall be denied, revoked or suspended.

E. If the department suspends a MAC's certificate, the suspension shall remain in effect until the department:

1. - 3. ...

F. The department shall investigate prior to making a final determination on a suspended certificate. During the

time of suspension, the suspended certificate holder shall return his certificate to the department.

1. If a suspension overlaps a certificate renewal date, the suspended certificate holder shall be subject to the renewal procedures stated in §8603.G. However, the department shall not renew the certificate until it determines that the reason for suspension no longer exists.

G. If the department revokes or does not renew a certificate, a person may reapply for a certificate by complying with the provisions of this Chapter at the time of reapplication. The department may refuse to issue a certificate if the reason for revocation or non-renewal continues to exist.

1. If a certificate is revoked or not renewed, the certificate holder shall immediately return the certificate to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1417 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1250 (May 2012).

§10091. Evaluation of Pilot Program

A. - C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1026.1 - 37:1026.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1418 (July 2008), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1251 (May 2012).

Bruce D. Greenstein
Secretary

1205#080

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Small Rural Hospitals—Upper Payment Limit
(LAC 50:V.5311, 5511, 5711, 5911, and 6113)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.5311, §5511, §5711, §5911, and §6113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 5. Outpatient Hospitals

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5311. Small Rural Hospitals

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient

hospital surgery services up to the Medicare outpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1251 (May 2012)

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5511. Small Rural Hospitals

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient hospital clinic services up to the Medicare outpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1251 (May 2012).

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5711. Small Rural Hospitals

A. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient clinical diagnostic laboratory services up to the Medicare outpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1251 (May 2012).

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5911. Small Rural Hospitals

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for rehabilitation services up to the Medicare outpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1251 (May 2012).

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6113. Small Rural Hospitals

A. - A.2. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees up to the Medicare outpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1251 (May 2012).

Bruce D. Greenstein
Secretary

1205#076

RULE

Department of Health and Hospitals Office of Public Health

Public Health Immunization Requirements (LAC 51:II.701)

The Department of Health and Hospitals, Office of Public Health, in accordance with R.S. 91:348 and with the Administrative Procedure Act, R.S. 49:950 et seq., has amended LAC 51:II.701, Public Health Immunization Requirements. This text has been amended in response to updating current and newly developed vaccines to meet the school law immunization schedule and to standardize and enforce immunization compliance reports utilizing the Louisiana Immunization Network for Kids Statewide (LINKS) registry by all schools operating within Louisiana.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part II. The Control of Diseases

Chapter 7. Public Health Immunization Requirements

§701. Immunization Schedule

[Formerly paragraph 2:025]

A. Appropriate immunizations for age for regulatory purposes shall be determined using the current immunization schedule from the Advisory Committee for Immunization Practice (ACIP) of the United States Public Health Service. Compliance will be based on the individual having received an appropriate number of immunizations for his/her age of the following types:

1. vaccines which contain tetanus and diphtheria toxoids, including DTP, DtaP, DT,Tdap, or Td or combinations which include these components;
2. polio vaccine, including OPV, eIPV, IPV, or combinations which include these components;
3. vaccines which contain measles antigen, including MMR and combinations which include these components;
4. vaccines which contain hepatitis antigen, including HepB, HepA, and combinations which include these components;
5. vaccines which contain varicella antigen, including varicella and combinations which include these components.

B. A one-month period will be allowed from the time the immunization is due until it is considered overdue. Medical, religious, and philosophic exemptions will be allowed for compliance with regulations concerning day care attendees and school enterers. Only medical and religious exemptions will be allowed for compliance with regulations concerning public assistance recipients. A copy of the current Office of

Public Health immunization schedule can be obtained by writing to the Immunization Program, Office of Public Health, 1450 L and A Road, Metairie, LA 70001 or by telephone (504) 838-5300 or toll free (800) 251-2229.

C. [Formerly paragraph 2:025-1] Any child 18 years or under, admitted to any day care center or residential facility shall have verification that the child has had all appropriate immunizations for age of the child according to the Office of Public Health schedule unless presenting a written statement from a physician stating that the procedure is contraindicated for medical reasons, or a written dissent from parents. The operator of any day care center shall report to the state health officer through the health unit of the parish or municipality where such day care center is located any case or suspected case of reportable disease. Health records, including immunization records, shall be made available during normal operating hours for inspection when requested by the state health officer. When an outbreak of a communicable disease occurs in a day care center or residential facility, the operator of said day care center or residential facility shall comply with outbreak control procedures as directed by the state health officer.

D. [Formerly paragraph 2:025-2] On or before October 1 of each year, the operator of each day care center, nursery school, or residential facility enrolling or housing any child 18 years or under, including and not limited to these listed facilities shall submit a preliminary immunization status report of all children enrolled or housed as of that date. This compliance report shall be submitted utilizing the Louisiana Immunization Network for Kids Statewide (LINKS) once the software module is completed for reporting and shall include identifying information for each child, and for each dose of vaccine received by the child since birth, Any child exempt from the immunization requirement shall also be identified, and the reason for exemption given on the report. After review of the report(s) by the state health officer or his or her designee, the day care center, nursery school, or residential facility operator will notify, on or before December 31 of each year, the parent or guardian of all enrolled or housed children, who are not compliant, with the immunization requirement of §701.A and C of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2) and R.S. 40:5. Also see R.S. 17:170, R.S. 22:215.14, R.S. 40:31.15 and R.S. 44:17.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1221 (June 2002), amended LR 38:1252 (May 2012).

Bruce Greenstein
Secretary

1205#031

RULE

Department of Public Safety and Corrections Corrections Services

Offender Incentive Pay and Other Wage Compensation (LAC 22:I.331)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, has amended

the contents of Section 331 Offender Incentive Pay and Other Wage Compensation.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult Services

Subchapter A. General

§331. Offender Incentive Pay and Other Wage Compensation

A. Purpose—to state the secretary’s policy regarding payment of incentive wages and other wage compensations to offenders.

B. Applicability—deputy secretary, undersecretary, chief of operations, assistant secretary, director of prison enterprises, regional wardens and wardens. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary’s policy that compensation shall be paid, in accordance with the provisions of this regulation, to all offenders who have served at least three years of their sentence in the physical custody of the department and who have performed satisfactory work in the job assignment in which they have been classified (except those offenders who opt to receive good time in lieu of incentive wages in accordance with R.S. 15:571.3).

D. Procedures

1. An offender sentenced or resentenced or who is returning to the physical custody of the department on or after September 20, 2008, who is not eligible to earn good time at any rate shall serve three years from the date of reception before becoming eligible to earn incentive pay.

a. Grandfather Clause. The provisions of this section are applicable to offenders received at the reception and diagnostic centers on or after September 20, 2008. Offenders received at reception and diagnostic centers prior to this date shall be subject to the waiting period previously in effect for this regulation. Offenders who are currently receiving incentive pay will not be affected and will continue to be eligible to receive incentive pay as they did on the effective date of this regulation but shall be subject to the provisions of Paragraph D.2, as it applies to job changes.

2. Once eligible to earn incentive pay, each offender shall initially be paid an “introductory pay level” of two cents per hour for a period of six months. After six months, the offender shall be paid at the lowest pay rate that is commensurate with the job assignment he is placed in by the institution. In the event of a change in an offender’s job assignment or custody status, the offender’s rate of compensation shall automatically be adjusted to the lowest pay rate of the assigned job. If the change in job assignment is not for disciplinary reasons, but due to institutional needs, the offender shall be paid at the same rate as the previous job assignment and the rate of compensation shall not be automatically adjusted to the lowest pay rate of the new job assignment. Institutional need shall only be determined by the warden or designee based on the circumstances of the facility and the skills of the offender population. All job changes for institutional need shall be approved by the warden or designee.

a. Grandfather Clause. Offenders earning incentive pay at any rate, prior to the effective date of this regulation, shall continue to earn at these rates. If the offender is reassigned to a new job or vacates the job for any reason and it has been determined the rate of pay for the job that he is leaving should be lower, the next offender to fill that position will receive the adjusted lower rate.

3. An offender may receive a raise in his hourly pay rate of no greater than \$0.04 per hour on an annual basis unless specifically authorized by mutual agreement of the director of prison enterprises and the warden of the respective institution, except as provided in Paragraphs D.12 and 13 below.

4. No offender shall earn more than 80 hours in a two-week period unless specifically authorized by mutual agreement of the director of prison enterprises and the warden of the respective institution.

a. Exception. Offenders assigned to job duties at the governor’s mansion will not be limited to 80 hours bi-weekly.

5. An offender sentenced or re-sentenced or who is returning to the physical custody of the department on or after the effective date of this regulation shall not be eligible to earn incentive wages, if the offender is eligible to earn good time at any rate.

a. Grandfather Clause. Offenders currently earning good time at a rate of three days for every seventeen days served in accordance with Act 1099 of the 1995 Regular Session who are also earning incentive pay shall be allowed to continue to earn incentive pay at authorized rates.

6. Any offender who has his incentive pay forfeited as a disciplinary sanction shall return to the “introductory pay level” of two cents per hour for a six month period upon reinstatement of his right to earn incentive pay. At the end of the six month period, the offender’s pay will be automatically adjusted to the lowest pay rate for the assigned job.

7. A series of pay ranges and a standardized list of job titles shall be established by the director of prison enterprises and approved by the secretary or designee. The institutions shall be assigned limits on the total amount of incentive wages paid in certain pay ranges. These limits shall be derived on a percentage basis determined by the total hours worked by offenders who are eligible to earn incentive pay at each institution and shall be approved by the director of prison enterprises and the secretary or designee. Prison enterprises shall issue reports detailing each institution’s status with regard to their limits on a quarterly basis. Offender banking shall monitor the assigned limits to ensure that the institutions remain within their limits and report discrepancies to the chief of operations, the appropriate regional warden, the director of prison enterprises and the warden of the institution.

a. The regional wardens shall work closely with the director of prison enterprises to ensure that any institution that exceeds the established limits is brought back into compliance in an expeditious manner.

b. Exception. Offenders who work in prison enterprises job titles will not affect an institution’s pay range percentage limits.

8. Incentive wages shall not be paid for extra duty assignments that are imposed as sanctions through the offender disciplinary process.

9. All offenders classified in limited duty status and who are eligible to earn incentive wages shall earn at a rate of no more than \$0.04 per hour. This excludes offenders classified as regular duty with restrictions or those with a temporary limited duty status.

10. All offenders classified in working cellblocks and maximum custody field lines who are eligible to earn incentive wages shall earn at the rate of \$0.02 per hour.

11. All offenders assigned to educational or vocational programs who are eligible to earn incentive wages shall be paid at the rate of \$0.04 per hour.

a. Exception. Due to the importance of the New Orleans Baptist Theological Seminary program and its positive impact on the department, offenders enrolled in this program shall earn incentive wages at the following rates.

Freshmen	\$0.14 per hour
Sophomores	\$0.16 per hour
Juniors	\$0.18 per hour
Seniors	\$0.20 per hour

b. Upon completion of any educational or vocational program, the offender may, upon request and at the discretion of the warden and based upon availability, return to the same job at the same rate of pay he held prior to enrollment in the program.

12. Offenders assigned to prison enterprises industrial, agricultural, service or other prison enterprises jobs may be compensated at a rate up to \$0.40 per hour. The pay range for these jobs shall be established by the director of prison enterprises and approved by the secretary or designee.

13. Offender tutors who achieve certification from the Corrections Education Association (CEA) or an NCCER or other industry based certification may be paid, on a graduating scale, up to \$1.00 per hour while working as a tutor in the area of certification. Certified tutors may earn \$0.75 per hour during the first twelve months after certification and may receive an annual raise of ten cents per hour, up to a maximum of \$1.00 per hour.

14. In accordance with established procedures, offenders who are participating in the American sign language interpreting program shall earn incentive wages at the following rates.

Sign Language Student I	\$0.20 per hour
Sign Language Student II	\$0.30 per hour
Sign Language Interpreter Student	\$0.50 per hour
Sign Language Interpreter Intern	\$0.60 per hour
Sign Language Interpreter	\$0.75 per hour-may be increased to a maximum of \$1.00 per hour

15. Offenders who are eligible to earn incentive wages shall be paid only for actual hours worked in their job assignment. Offenders shall not be paid for time spent away from their job assignment due to circumstances such as holidays, callouts, duty status, weather, illness, etc.

16. For the purpose of this regulation, income earned from a private sector/prison industry enhancement (PS/PIE) program or a transitional work program is not "incentive

pay." Therefore, offenders employed in any of these programs may receive good time in accordance with the law. The director of prison enterprises shall establish record-keeping procedures relating to wages earned by offenders employed in a PS/PIE program that include all mandatory deductions from offender wages, other deductions such as child support or garnishment and the distribution of net offender wages to offender banking.

E. Sources of Funding

1. The division of prison enterprises shall pay all incentive wages.

2. Offenders who are employed in a certified PS/PIE program shall be paid by the private business that employs them or by prison enterprises depending upon the type of PS/PIE program that is in operation, in accordance with the terms stated in the employment agreement.

3. Offenders who are participating in a transitional work program shall be paid by the private business that employs them, in accordance with the terms outlined in the employment agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public safety and Corrections, Corrections Services, LR 34:1927 (September 2008), amended LR 36:531 (March 2010), LR 38:1253 (May 2012).

James M. Le Blanc
Secretary

1205#036

RULE

**Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission**

Liquefied Petroleum Gas (LAC 55:IX.Chapters 1-15)

Under the authority of R.S. 40:1846, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Liquefied Petroleum Gas Commission repeals and re-enacts the liquefied petroleum gas commission regulations, LAC 55:IX. The Rule reflects changes adopted by the Commission pursuant to updates to the National Fire Protection Association's Liquefied Petroleum Gas Code 58, 2008 edition and the National Fuel Gas Code 54, 2009 edition. The Rule also makes technical changes to improve readability, codify current practices by the commission regarding utilization of its statutory authority to regulate the propane industry, repeal provisions for certain permits which are no longer issued by the commission, and permit public website notification of non-compliance in lieu of a certified letter to all dealers.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

Editor's Note: This Chapter applies to all classes of permits.

Subchapter A. New Dealers

§101. Prerequisite

A. As a prerequisite to engage in the liquefied petroleum gas business in the state of Louisiana, an applicant shall first comply with the applicable rules and regulations of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended LR 38:1254 (May 2012).

§103. Definitions

A. The following terms, as used in this Part, have the meanings listed below.

Appliance—any device that utilizes gas as a fuel or raw material to produce light, heat, power, refrigeration, or air conditioning.

Applicant—a person, firm, or corporation who has applied for a permit or registration with the Liquefied Petroleum Gas Commission.

Approved—approved by or acceptable to the authority having jurisdiction. This normally means that equipment or materials that are listed or labeled have been specifically approved by the authority having jurisdiction.

ASME—American Society of Mechanical Engineers.

Authority Having Jurisdiction (AHJ)—the organization, office, or individual responsible for approving equipment, an installation, or a procedure. In Louisiana the AHJ is the Liquefied Petroleum Gas Commission, the Office of the Director of the Liquefied Petroleum Gas Commission.

Cargo Tank—a container used to transport liquefied petroleum gas over a highway as liquid cargo, either mounted on a conventional truck chassis or as an integral part of a transporting vehicle in which the container constitutes in whole, or in part, the stress member used as a frame.

CETP—Certified Employee Training Program.

Commission—Louisiana Liquefied Petroleum Gas Commission.

Container—any vessel, including cylinders, tanks, portable tanks, and cargo tanks used for the transporting or storing of liquefied petroleum gas.

Dealer or Permit Holder—any person, firm, or corporation who holds a permit or registration to enter into any phase of the liquefied petroleum gas business in the state of Louisiana.

DOT—the United States Department of Transportation.

End User—any person, firm, or corporation which has the use of or legal authority or control over any system which utilizes liquefied petroleum gas.

Installation—when used in the context of an existing thing, the same as system or liquefied petroleum gas system (see definition of *system* or *liquefied petroleum gas system*).

Installation—when used in the context of an action, the art of installing or setting up for use or service.

Labeled—equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization that is acceptable to the authority having jurisdiction and concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling manufacturer indicates compliance with appropriate standards or performance in a specified manner.

Leak Check—operation performed on a complete gas piping system and connected equipment prior to placing it into operation following initial installation and pressure testing or interruption of gas supply or out-of-gas situation or first time service of a new customer to verify that the system does not leak.

Liquefied Petroleum Gases—those gases derived from petroleum or natural gas, and are herein defined as those in the gaseous state at normal atmospheric temperature and pressure, and those maintained in liquid state at normal atmospheric temperature by means of suitable pressure. Those gases having a vapor pressure not exceeding that allowed for commercial propane composed predominantly of the following hydrocarbons, either by themselves or as mixtures: propane, propylene, butane (normal butane or iso butane), and butylenes. This definition shall not include acetylene as a regulated gas.

Listed—equipment or materials included in a list published by an organization acceptable to the authority having jurisdiction and concerned with product evaluation that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate standards or has been listed and found suitable for use in a specified manner.

Materially Affect Safety—any action or inaction that significantly and adversely affects the public health, safety or welfare, whether caused by deliberate act or negligence.

Mobile Air Conditioning System—mechanized vapor compression equipment which is used to cool the driver's or passenger's compartment of any motor vehicle.

New Dealer—any person, firm, or corporation that does not hold a permit or registration to engage in the liquefied petroleum gas business as of the date of their application.

Office of the Director—the office of the Executive Director of the Louisiana Liquefied Petroleum Gas Commission.

Places of Public Assembly—places where the egress is open to the public. This definition includes, but is not limited to, bars, restaurants, service stations, grocery stores, schools, churches, hospitals, sales offices, nursing homes, and other similar places. This definition is not intended to include places that limit public access.

Pressure Test—an operation performed to verify the gas tight integrity of gas piping following its installation or modification.

Qualified Agency—any person, firm, or corporation which is engaged in and is responsible for the installation or replacement of liquefied petroleum gas piping, tanks, containers, the connection, installation, repair, or servicing of equipment or appliances and is experienced in such work and familiar with all precautions required and has complied with all the requirements of the authority having jurisdiction.

Reseller or Wholesaler—

- a. a person, firm, or corporation who:
 - i. holds title or ownership of liquefied petroleum gas as it leaves the facility or plant of a manufacturer of liquefied petroleum gas, or the facility or plant of a manufacturer of products of which liquefied petroleum gas form a component part, or of a commercial storage facility;
 - ii. transfers such title or ownership to another without substantially changing the form of the liquefied petroleum gas;
 - iii. transfers such title or ownership to another reseller, or to a liquefied petroleum gas dealer for sale at retail;
- b. this definition shall include a manufacturer of liquefied petroleum gas or a manufacturer of products of which liquefied petroleum gas forms a component part, if

title or ownership transfers directly from the manufacturer to a liquefied petroleum gas dealer for sale at retail;

c. this definition shall not include a manufacturer of liquefied petroleum gas or a manufacturer of products of which liquefied petroleum gas forms a component part, if title or ownership transfers to another manufacturer of liquefied petroleum gas, to another manufacturer of products of which liquefied petroleum gas forms a component part or to a reseller.

Retail Dealer—any person, firm, or corporation who normally sells liquefied petroleum gas to an end user for consumption.

Retail Station—that portion of property where liquefied petroleum gases used as motor fuel are stored and dispensed from fixed equipment into liquefied petroleum gas fuel tanks of motor vehicles and where such dispensing is an act of retail motor fuel sale.

State of Emergency or Disaster—any event declared by the governor of the state by his authority under the "Louisiana Homeland Security and Emergency Assistance and Disaster Act" under R.S. 39:721 et seq.

System or Liquefied Petroleum Gas System—any tank, container, heat or cold producing device, appliance or piping that utilizes or has liquefied petroleum gas connected thereto. This includes, but is not limited to, ranges, hot water heaters, heaters, air conditioners, containers, tanks, furnaces, space heaters or piping used in the transfer of liquefied petroleum gas either in the vapor or the liquid state from one point to another, internal combustion engines, both stationary and mobile, grain dryers or any combination thereof.

Tank(s)—same as a container(s).

Used Manufactured Home—a manufactured home which is not being sold or offered for sale as new, which has been previously sold as new and is used for residential purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:459 (March 1998), LR 29:2508 (November 2003), LR 31:2556 (October 2005), LR 33:1139 (June 2007), effective July 1, 2007, LR 36:2571 (November 2010), amended LR 38:1255 (May 2012).

§105. Applications

A. Any person, firm, or corporation desiring to enter the liquefied petroleum gas business in the state of Louisiana shall file formal application for a permit or registration with the commission. In the case of Class VI and Class VIII permits, a formal application for a permit shall be filed for each location. All other classes of permits and registrations require only one formal application for the permit or registration. These applications for permits or registrations shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits or registrations at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been

administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified, except in the cases of Class VI-X, VII-E, and R-1, R-2 registrations, where appearance is waived. The applicant's supplier is prohibited from being the authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) will be furnished by the commission upon request.

B. No person, firm or corporation engaged in selling of liquefied petroleum gas only in small consumer quantities in U.S. Department of Transportation specification 2Q containers shall be required to obtain a permit as required by R.S. 40:1847. These quantities shall not exceed 1 liter per container.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 24:460 (March 1998), LR 25:1262 (July 1999), LR 29:2509 (November 2003), LR 31:2567 (October 2005), LR 33:1139 (June 2007), effective July 1, 2007, amended LR 38:1256 (May 2012).

§107. Requirements

A. Before any permit or registration may be issued from the office of the director, all applicants shall have complied with or agree to comply with the applicable requirements as follows:

1. Shall deposit filing fee of \$100 for Class I and IV; \$50 for Class VI-X and \$25 for all other classes and registrations. This fee shall accompany application.

2. Formal application for a permit or registration shall be submitted to the office of the director.

3. Shall have on file in the office of the director, proof of insurance, on a commission proprietary certificate of insurance, or one substantially equivalent, issued by a Louisiana licensed agent, in the minimum sum of \$1,000,000, in the classes of insurance as required by the commission. This certificate of insurance shall indicate the type and amount of coverage. This policy of insurance shall meet the proof of insurance as required by the commission. Said certificate shall be considered evidence of liability insurance coverage; said certificate shall state that in the event the insurance company cancels the insurance policy, the insurance company shall notify the office of the director 10 days prior to the date of cancellation. A binder of insurance coverage shall be acceptable as proof of insurance until the policy is issued and a certificate of insurance is issued. The \$1,000,000 requirement shall be effective on the first proof of insurance required after November 1, 2003. The commission shall provide the proprietary certificate of insurance form on its public web site for downloading or shall provide copies of the proprietary certificate of insurance form via facsimile or via U.S. mail upon request. In lieu of the certificate of insurance for automobile liability, the commission may accept a certificate of self-insurance issued by the office of motor vehicles.

a. In lieu of such liability insurance coverage, the applicant may post with the commission bonds or other securities issued by the United States of America or the state of Louisiana, or certificates of deposit or similar instruments issued by a lending institution regulated by an agency of this state or by the federal government, in the minimum sum of \$1,000,000, which bonds or securities shall be held in trust by the commission for the benefit of any person, firm or corporation to which such legal liability may accrue;

b. Nothing in this Paragraph shall be construed as reducing the insurance requirements imposed by the laws or rules and regulations of the federal government or the state of Louisiana upon persons, firms or corporations engaged in the liquefied petroleum gas business.

4.a. Where applicable, storage tank and location shall be approved by the commission's authority having jurisdiction.

b. All sketches or drawings of proposed bottle filling plants and/or liquid withdrawal systems shall be submitted to the office of the director and approved before system is put into operation.

5.a. Where applicable, applicant shall provide adequate transport and/or delivery trucks satisfactory to the commission. Each transport and/or delivery truck used in Louisiana shall be registered in Louisiana and shall be inspected annually by the commission or other qualified agency acceptable to the commission. However, any transport and/or delivery truck registered and not being used in Louisiana shall either have the inspection required of those used in Louisiana or apply for a waiver of the inspection, in writing, prior to its inspection due by date. Transports and/or delivery trucks granted a waiver of inspection shall be inspected prior to their use in Louisiana. Each transport and/or delivery truck registered in Louisiana shall have an annual registration fee of \$50 paid and a valid registration decal affixed to the transport and/or delivery truck.

b. All sketches of proposed installations, as required in other Sections of these regulations, shall be submitted to the office of the director, showing all details of the proposed installation governed by these regulations. Sketches or drawings shall be submitted to the office of the director and approved before installation may begin. The commission reserves the right to make a final inspection and witness a pressure test by an inspector of the commission.

c. Each location of Class 1, Class 6 and Class 8 dealers, which fill DOT specification cylinders of 200 lbs. or less, liquefied petroleum gas capacity, that are in commerce or transportation, shall provide a suitable weighing device (scales).

6. Applicant shall have paid a permit fee in the amount of \$75, except for Class VII-E, which shall be \$100, and R-1, R-2 registrations, which shall be \$37.50 and Class VI-X shall be in the amount of \$75 for the first location, plus \$50 for each 2-11 locations, plus \$25 for each 12-infinity locations. For succeeding years the permit fee shall be 0.1242 of 1 percent of annual gross sales of liquefied petroleum gas with a minimum of \$75, except in the case of Class VI-X which the minimum permit fee shall be \$75 for the first location, plus \$50 for each 2-11 locations, plus \$25 for each 12-infinity locations; or 0.1242 of 1 percent of

annual gross sales of liquefied petroleum gases of all locations whichever is greater. For classes not selling liquefied petroleum gases in succeeding years the permit fee shall be \$75, except registrations shall be \$37.50 per year.

a. Each Class I and Class IV dealer shall prepare and submit reports to the commission of each three month period within their annual permit fee calculation period, by the end of the month following each three month period, in a form acceptable to the commission, the previous three month's purchases and sales. An additional five calendar days shall be granted for mail delays before a violation is issued.

b. The reports of Class IV dealers shall contain the purchases and sales indicated by total dollars and by company name. The reports of Class I dealers shall contain the purchases by total dollars and by company name and sales by total dollars only.

c. Any information so furnished shall be considered and held confidential and privileged by the commission, its director and/or his employees.

7. Persons in charge of operations shall furnish proof satisfactory to the commission and the office of the director, that they have had experience in and are familiar with and will abide by all safety precautions necessary in the conducting of the business for which they are granted a permit.

8. All service and installation personnel, fuel transfer personnel, carburetion mechanics and tank truck drivers shall have a card of competency from the office of the director. All permit holders, except Class VI-X permit holders, shall have at least one card of competency issued to their permit. The commission may waive the one card of competency until the dealer commences operations in the state. A card of competency shall be issued to an applicant upon receipt of a \$20 examination fee and successfully passing the competency test, providing the applicant holds some form of identification acceptable to the commission. The commission may accept as its own a reciprocal state's examination which contains substantially equivalent requirements. This shall be evidenced by a letter from the issuing authority or a copy of a valid card issued by the reciprocal state. All applicable fees shall be paid prior to issuing the card.

a. All cards of competency shall be renewed annually by the permit holder. There is a charge of \$10 per card. After expiration, there is a penalty of \$3 per card. There is a charge of \$10 for replacing a lost card, a change of employer name or change of company name. A card with an improper employer or company name shall not be valid.

b. All employees who are qualified by this commission and have been issued certificates of competency, shall have their certificates of competency on their person while on duty. Should an employee lose his card, dealer shall notify this office within 10 days for the issuance of a new card. If an employee terminates his employment with the dealer for whom the card is issued, the card shall be picked up by the dealer and returned to this office immediately.

c. The following shall be mandatory training requirements in order to maintain a certificate of competency in Louisiana:

i. New Hires

(a). Certified Employee Training Program (CETP) or commission approved alternatives shall be the basis of all new hire training, which is not grandfathered.

(b). In addition to the standard commission competency test which is required prior to beginning work unsupervised, all certificates of competency holders of Class 1 permit holders with certificates of competency with the following names: delivery truck driver, manager exam, installation and service, and delivery truck driver/limited service shall pass the CETP Basic Test or commission approved alternative training program within one year of their hire date. Up to two years provisional certificates of competency may be issued by the commission. Other commission certificates of competency, namely serviceman recreational vehicles, transport truck driver, motor fuel and carburetion installation, welding and metal working industry, cylinder delivery truck driver, cylinder re-qualification, and all combined certificates containing the immediate before named certificates of competency are exempt from this provision.

(c). Training may be given by the individual companies or may be given by an outside firm and individual companies may use any method they choose to train their employees on the CETP Basic Program, if used. This may include, but is not limited to, e-learning, CDs, manuals, classroom instruction or any combination thereof.

(d). The CETP Basic Test, if used, shall be proctored by a licensed proctor.

(e). Proof of a passing grade, for purposes of certification, shall be maintained in dealer employee file. In addition, the employer shall be required to certify by signature on the official card of competency renewal form that the employee has passed the CETP Basic test prior to the second renewal period for the employees subject to the provisions of §107 (A)(8)(c)(i). The employer shall maintain this record until 1 year after the employment has terminated.

(f). Individuals who have held a certificate of competency with the commission for five consecutive years or longer are exempt from the CETP Basic test new hire provision; however, they shall meet the continuing education training provisions:

ii. Continuing Education

(a). Individuals with a commission certificate of competency in the following test names: transfer and cylinder filling operator, delivery truck driver, manager exam, installation and service, welding and metal working industry, cylinder delivery truck driver, delivery truck driver/limited service, and all combined certificates containing any of the immediate before named certificates of competency shall have a minimum of two hours of approved continuing education every three years in order to maintain their certificates of competency.

(b). This training shall include training that is most tailored for the particular functions the employee does on a normal and routine basis. This may include CETP modular training classes, defensive driving classes, equipment certification classes, pipe sizing classes, leak check classes and other similar training pre-approved and assigned credit time by the commission.

(c). All training approved by the commission shall be in objective format such as written, video with audio, or audio only. Each training class will be assigned credit time value for meeting time requirements of this Section.

(d). This training may be done in-house by the dealer, by outside sources, or by commission inspectors.

(e). Proof of a passing grade, for purposes of certification, shall be maintained in dealer employee file. In addition, the employer shall be required to certify by signature on the official card of competency renewal form that the employee has passed the CETP Basic test prior to the second renewal period for the employees subject to the provisions of §107 (A)(8)(c)(ii). The employer shall maintain this record until 1 year after the employment has terminated.

9. Shall have necessary experience in liquefied petroleum gas business or have employed a recognized operator of such experience and competency. The commission reserves the right to demand that such knowledge and competency be proved by a written examination.

10. Where applicable, shall provide adequate switch track or tank loading and unloading facilities. All auxiliary equipment such as pumps, hose, electrical switches, etc., shall be Underwriters Laboratory approved for liquefied petroleum gases. If equipment is not approved, drawings and descriptions shall be submitted to the office of the director for his approval before installation.

11. Applicants for change of name shall deposit a filing fee of \$25 with a formal application for a name change. The office of the director shall administratively grant the name change after all commission requirements are met. The commission shall ratify the name change at the next commission meeting after which a minimum of 20 days have elapsed since the administrative granting of the name change. A representative of the new firm or corporation shall be required to be present when the application is ratified by the commission, except in the cases of Class VI-X, VII-E, and R-1 and R-2 registrations, when appearance is waived. All certificates of competency shall be changed to new name, except Class VI-X which does not require certificates of competency.

12. Any permit holder who does not actively engage in business for which permit was granted, for a period of six consecutive calendar months, may have his permit revoked by the commission.

13. The commission shall grant Class I Liquefied Petroleum Gas permits to nonresident applicants only after the commission has reached a reciprocal agreement with the Liquefied Petroleum Gas regulating authority of the state in which the applicant resides.

14. All Class I, Class VI, Class VI-X, and Class VIII permit holders shall accept, for proper disposal or requalification, all 4 lb. through 40 lb. liquefied petroleum gas cylinders from consumers, when offered, which are not suitable for continued service in their present condition. Class I permit holders who supply liquefied petroleum gas to Class VI, Class VI-X and Class VIII permit holders shall accept and properly dispose of or requalify all 4 lb. through

40 lb. liquefied petroleum gas capacity cylinders when offered by their Class VI, Class VI-X, or Class VIII permit holders for disposal or requalification. Those cylinders offered for disposal or requalification become the property of the permit holders accepting the cylinder. It is the responsibility of the Class I permit holders to properly dispose of the cylinders which are not or cannot be requalified.

15. All classes of permit holders who fill cylinders on their premises for the public shall have a "Reject and Do Not Fill" poster or sign approved by the commission at each filling location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 1:315 (July 1975), LR 4:86 (March 1978), LR 7:633 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 15:854 (October 1989), LR 16:1063 (December 1990), LR 20:1400 (December 1994), LR 24:461 (March 1998), LR 24:2311 (December 1998), LR 25:1262 (July 1999), LR 25:2410 (December 1999), LR 26:1487 (July 2000), LR 27:2256 (December 2001), LR 28:2553 (December 2002), LR 29:2509 (November 2003), LR 31:2567 (October 2005), LR 33:1140 (June 2007), effective July 1, 2007, LR 35:2201 (October 2009), LR 35:2465 (November 2009), LR 38:1256 (May 2012).

§109. Compliance with Rules

A. Compliance with all other applicable rules and regulations is a mandatory requirement for all permit holders.

B. The commission may assess a civil penalty of not less than \$100 nor more than \$1000 for each violation of the rules and regulations adopted by the commission. Civil penalties may be assessed only by a ruling of the commission based on an adjudicatory hearing held in accordance with the Administrative Procedure Act. The commission may institute civil proceedings to enforce its ruling in the district court for the parish in which the commission is domiciled or the district court for the parish in which the violation occurred.

C. In lieu of the adjudicatory hearing required in §109.B, the commission may accept an affidavit signed by the party being cited for a violation, prior to the hearing date set for the charge, waiving their right of appearance, with a plea of guilty to a charge, and with the payment of a proposed penalty as set forth in the notice issued by the commission. Regarding violations involving fees, the fee and any interest and penalty on those fees shall be paid in addition to the proposed civil penalty for the violation. This option shall not be available after the hearing date.

D. Proposed civil penalties shall be limited to the following amount per subject matter area on the first violation, within a three year period: insurance \$225, permit fees \$150, signage requirements \$150, tanker truck registrations \$300, tanker truck, school bus and mass transit safety inspections \$150, school bus and mass transit registrations \$150, installation reports \$150, failure to accept cylinders for disposal \$150, scale requirements \$150 and chock block requirements \$100. The commission may increase the proposed civil penalties by 25-30 percent for a second violation, within a three year period. The commission

shall require appearance at the adjudicatory hearing for a third violation within a three year period.

E. The commission reserves the right to conduct a full adjudicatory hearing regarding any violation of its rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 25:2411 (December 1999), LR 31:2567 (October 2005), LR 38:1259 (May 2012).

§111. Re-Application

A. Any person, firm or corporation who has made application for a permit to enter the liquefied petroleum gas business and whose request for permit has been denied, may re-submit an application 90 days after date of denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 7:633 (December 1981), LR 38 1259 (May 2012).

§113. Classes of Permits and Registrations

A. The commission shall issue upon application the following classes of permits and registrations upon meeting all applicable requirements of §107 and the following:

1. Class I. Holders of these permits may enter any phase of the liquefied petroleum gas business.

a. Shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 coverage per:

- i. products;
- ii. manufacturers and contractors; and
- iii. automobile liability.

b. Holders of these permits shall provide a storage capacity for liquefied petroleum gas of not less than 15,000 gallons in one location, under fence, located within the dealer trade area within the state of Louisiana, and shall show evidence of ownership of storage tank or a bona fide lease of five years minimum. This requirement shall not be retroactive.

c. Where fuel is used direct from cargo tank, an approved valve with proper excess flow device shall be used. Connector to vehicle's engine shall be approved for such use and protected from mechanical injury.

d. No truck shall be parked on a street or highway at night in any city, town, or village, except for the purpose of serving a customer.

e. Compliance with all other applicable rules and regulations is a mandatory requirement.

f. The name of the dealer shall appear on all tank trucks, storage tank sites, and/or advertising being used by the dealer. At consumer premises, where the tank or the container is owned by the dealer, the dealer's name shall be affixed. This requirement is considered met if documentation is provided, upon demand, that the dealer's name was affixed at the time of installation. Consumer premises requirement is not retroactive.

2. Class II. Holders of these permits may install and service liquefied petroleum gas containers, piping, and appliances but shall not sell nor deliver gas with this permit. This class is also applicable to the installation and service of

liquefied petroleum gas containers, piping, and appliances on mobile homes, modular homes, manufactured homes, motor homes, travel trailers homes or any other recreational vehicles.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 coverage per:

- i. products;
- ii. manufacturers and contractors; and
- iii. motor vehicle liability.

b. Louisiana manufacturers and dealers of mobile homes, manufactured homes, modular homes, motor homes, travel trailers, or any recreational vehicles shall comply with all state and federal safety standards and perform all safety tests on mobile homes, modular homes, manufacture homes, motor homes, travel trailers, or any recreational vehicles using liquefied petroleum gas.

c. Upon delivery of a mobile home, manufactured homes, modular homes, motor home, travel trailer, or any other recreational vehicle, new or used, the required installation report and inspection and testing of any liquefied petroleum gas system and appliances shall be performed by the dealer or any entity performing functions as a dealer using liquefied petroleum gas in the system. An installation report properly completed and signed by the customer or his/her authorized representative shall be sent to the office of the director verifying that the tests were performed and that the test was eye witnessed by the customer or his/her authorized representative.

d. The mobile home, manufactured homes, modular homes or recreational vehicle dealer or entity performing functions as a dealer shall have a permit with this commission and is responsible to this commission to make the required installation report, perform the required inspection and safety tests, or make arrangements for it to be made by a qualified permit holder.

e. Compliance with all other applicable rules and regulations is a mandatory requirement.

3. Repealed and Reserved.

4. Class IV. Resellers (Wholesalers). Holders of these permits may deliver and transport liquefied petroleum gas over the highways of the state; may sell liquefied petroleum gases only to manufacturers of liquefied petroleum gases, or manufacturers of products which liquefied petroleum gases form a component part, or to dealers who hold a permit with this commission; utilize aboveground steel storage and/or approved salt dome, shale and other underground caverns for the storage of liquefied petroleum gases; do general maintenance work on their equipment, using qualified personnel, but shall not sell or install systems and appliances.

a. Shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 coverage per:

- i. products;
- ii. manufacturers and contractors; and
- iii. automobile liability.

b. The name of the dealer shall appear on all tank trucks which require registration with the commission and storage tank sites.

c. Compliance with all other applicable rules and regulations is a mandatory requirement.

5. Class V. Carburetion Permit. Holders of these permits may install equipment, including containers, and service liquefied petroleum gas equipment used on internal combustion engines. They shall not deliver liquefied petroleum gas.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per manufacturers and contractors liability coverage.

b. Compliance with all other applicable rules and regulations is a mandatory requirement.

6. Class VI. Holders of these permits may engage in the filling of approved cylinders and motor fuel tanks with liquefied petroleum gas on their premises, but shall not deliver gas.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products liability coverage.

b. The name of the dealer shall appear on storage tank sites.

c. Compliance with all other applicable rules and regulations is a mandatory requirement.

7. Class VI-X. Holders of these permits may engage in the exchange of approved liquefied petroleum gas cylinders on their premises, but shall not fill cylinders. They shall not deliver gas.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products liability coverage.

b. Any current Class VI permit holder may convert to a Class VI-X permit by filing formal application with the commission and submitting a \$25 filing fee. Presence of the applicant at the commission meeting will be waived. Upon receipt of the application and filing fee, permit shall be issued. No dealer can hold a Class VI and a Class VI-X permit at the same location.

c. Compliance with all other applicable rules and regulations is a mandatory requirement.

8. Class VII. Holders of these permits may transport liquefied petroleum gas by motor vehicle over the highways of the state of Louisiana but shall not sell product in the state. This permit may be secured from the office of the director upon receipt of the following:

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per automobile liability coverage.

b. Where fuel is used direct from cargo tank, an approved valve with proper excess flow device shall be used. Connector to vehicle's engine shall be approved for such use and protected from mechanical injury.

c. No truck shall be parked on a street or highway at night in any city, town, or village, except for the purpose of serving a customer.

d. The name of the dealer shall appear on all tank trucks which require registration with the commission.

e. Compliance with all other applicable rules and regulations is a mandatory requirement.

9. Repealed and Reserved.

10. Class VIII. Holders of these permits may store, transport and sell liquefied petroleum gas used solely in the cutting and metal working industry, sell and install piping

and containers for those gases and engage in the filling of approved ASME tanks, ICC or DOT containers used in the metal working industry.

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products, manufacturers and contractors, and automobile liability coverage.

b. The name of the dealer shall appear on all tank trucks which require registration with the commission and storage tank sites.

c. Compliance with all other applicable rules and regulations is a mandatory requirement.

11. Class IX. Holders of these permits may inspect, recertify and recondition DOT and ICC cylinders. They shall not sell or deliver liquefied petroleum gas or anhydrous ammonia.

a. Holders of these permits shall obtain from DOT a Retesters Identification Number, and provide proof of such to the commission.

b. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products liability coverage.

c. Holders of these permits shall provide drawing and description of equipment to be installed to retest cylinders. Drawing and description shall be submitted to the office of the director for his approval before installation.

d. Holders of these permits shall maintain an accurate log of all cylinders that have been retested by date, size, manufacturer name, and serial number. The commission reserves the right to inspect such logs at any time through its representative.

e. Compliance with all other applicable rules and regulations is a mandatory requirement.

12. Registration 1 (R-1). Holders of these registrations shall be a person, firm, or corporation who is engaged in the business of plumbing and holds a master plumber's license issued by the state of Louisiana. They may install liquefied petroleum gas or anhydrous ammonia piping and make alterations or modifications to existing piping systems. These registrations shall be issued by the office of the director upon meeting the applicable requirements of §107 and the following:

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per manufacturers and contractors liability coverage.

b. Compliance with the provisions of NFPA Pamphlet Number 54 (*National Fuel Gas Code*) and NFPA Number 58 (*Standard for the Storing and Handling of Liquefied Petroleum Gas*) and ANSI K 61.1-1989 is a mandatory requirement.

c. Compliance with all other applicable rules and regulations of the commission is a mandatory requirement.

13. Registration 2 (R-2). Holders of these registrations shall be a person, firm, or corporation engaged in the mechanical contracting business. They may install liquefied petroleum gas and/or anhydrous ammonia appliances and equipment, and make alterations or modifications to existing liquefied petroleum gas and/or anhydrous ammonia appliances and equipment. These registrations shall be

issued by the office of the director upon meeting the applicable requirements of §107 and the following:

a. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 per products and manufacturers and contractors liability coverage.

b. Compliance with the provisions of NFPA Pamphlet Number 54 (*National Fuel Gas Code*) and NFPA Number 58 (*Standard for the Storing and Handling of Liquefied Petroleum Gas*) and ANSI K 61.1-1989 is a mandatory requirement.

c. Compliance with all other applicable rules and regulations of the commission is a mandatory requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended and promulgated LR 3:315 (July 1977), amended LR 7:633 (December 1981), LR 8:53 (January 1982), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 12:841 (December 1986), LR 15:855 (October 1989), LR 16:1063 (December 1990), LR 19:904 (July 1993), LR 20:1400 (December 1994), LR 21:701 (July 1995), LR 24:461 (March 1998), LR 25:2411 (December 1999), LR 29:2509 (November 2003), LR 33:1141 (June 2007), effective July 1, 2007, LR 38:1259 (May 2012).

Subchapter B. Dealers

§115. Compliance with Rules and Act

A. All dealers who fail to comply with R.S. 40:1841 et seq. and the rules and regulations of the commission may have their application for permit denied or their permit suspended and/or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 15:860 (October 1989), LR 24:464 (March 1998), LR 38:1261 (May 2012).

§117. Revocation of Permits

A. The commission may revoke or suspend a permit only by a ruling of the commission based on an adjudication hearing held in accordance with the Administrative Procedure Act. The following are causes for revocation or suspension of a permit:

1. when the commission has assessed two or more penalties against a dealer for willful violation of or failure to comply with such rules and regulations, provided the second or succeeding penalty or penalties have been imposed for violations of or failure to comply, were committed after the imposition of the first penalty;

2. willful or knowing violation of a rule or regulation of the commission which endangers human life or health;

3. failure to properly odorize gas as required by R.S. 40:1846;

4. failure to provide insurance or proof of insurance as required;

5. failure to pay permit fees as required;

6. failure to pay any civil penalty imposed by the commission under provisions of R.S. 40:1846.1(E) within 30 days after the assessment becomes final.

B. The commission shall give 15 days written notice of the date, time and location of a hearing to deny, suspend or revoke a permit, or to impose a fine.

C. Any dealer who continues to operate after such permit is revoked or during the period of such suspension shall be liable to prosecution under provisions hereof in the same manner as if no such permit had ever been issued.

D. The commission may institute civil proceedings to enforce its rulings in the district court for the parish in which the commission is domiciled or in the district court for the parish in which violation which gave rise to the suspension or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:464 (March 1998), LR 38:1261 (May 2012).

§119. Permit Fees

A. All fees pursuant to R.S. 40:1849 shall be paid before a new permit will be issued each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 16:1063 (December 1990), LR 38:1262 (May 2012).

§121. Expiration of Permit

A. All permits or registrations shall expire at midnight on the date of their expiration.

B. All permits or registrations renewed after their expiration date shall have an administrative penalty of 5 percent of the assessed permit or registration fee for each month or fraction thereof, not to exceed 25 percent of the amount of the assessed permit or registration fee.

C. All permits or registrations renewed after their expiration date shall have administrative interest of 1 percent of the assessed permit or registration fee added for each month or fraction thereof to the amount of the permit or registration fee due.

D. Five days after the expiration of a permit or registration fee renewal date, any dealer continuing in operation without the payment of the fee, administrative penalty, and/or administrative interest due shall be considered as operating in violation of R.S. 40:1841-1853 and the rules and regulations of the commission. The commission may assess a civil penalty in accordance with R.S. 40:1846.1.E or any applicable provision of LAC 55:IX.117.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 16:1063 (December 1990), LR 24:464 (March 1998), LR 27:422 (March 2001), LR 38:1262 (May 2012).

§123. Qualified Personnel

A. All service, installation, fuel transfer personnel, carburetion mechanics, transport and delivery truck drivers shall have a card of competency from the office of the

director. New employees shall not make installations, service equipment, handle or deliver gas until they have passed the examination given by the office of the director or furnished proof to the office of the director of their qualifications by another qualified agency acceptable to the commission and a card showing their competency has been issued to them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:464 (March 1998), LR 38:1262 (May 2012).

§125. Report Accidents and Fires

A. Any accident involving liquefied petroleum gas or the transportation of liquefied petroleum gas which causes injury to employees, property damage, or injury to other persons or an accidental release of liquefied petroleum gas reportable under the Louisiana Right-To-Know Law shall be reported by that dealer in writing to the office of the director as soon as possible but not later than 48 hours after the accident. The office of the director shall accept, in lieu of the required report in writing, data and information from the information system established under the Hazardous Materials Information Development, Preparedness and Response Act.

B. Any fire in which liquefied petroleum gas is directly or indirectly involved shall be reported in writing to the office of the director by the dealer servicing that installation within 48 hours of knowledge of the fire, preferably immediately, so that it can be investigated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:465 (March 1998), amended LR 25:2412 (December 1999), LR 38:1262 (May 2012).

§127. Insurance

A. Insurance requirements for all persons, firms, or corporations with the same class permit or registration shall be the same. New dealer insurance requirements shall be the same as existing dealer requirements.

B. The commission may invoke the applicable provisions of §117 when insurance requirements are not met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:465 (March 1998), LR 38:1262 (May 2012).

§129. Odorizing Gases

A. Odorization and verification of odorization in liquefied petroleum gases shall be in accordance with the following provisions:

1. Except as otherwise provided in this Subchapter, each refinery, commercial storage facility, natural gas processing plant, pipeline, or other person which sell liquefied petroleum gas to a transporter, dealer, or distributor for distribution into the distribution chain to consumers shall odorize the liquefied petroleum gas in accordance with the provisions of this Subchapter.

2. Liquefied petroleum gas shall not be required to be odorized if it is to be delivered to a manufacturer of products of which liquefied petroleum gas forms a component part, to any facility for further processing, to a commercial storage facility, a natural gas processing plant, a refinery, a pipeline, or when odorization would be harmful in further use or processing of the gas and would not serve a useful purpose as a warning agent in further use or processing of the gas.

3. Liquefied petroleum gas, which is required to be odorized, shall be effectively odorized by an approved agent of such character as to positively, by a distinctive odor, the presence of gas down to concentrations in air of not over one-fifth the lower limit of flammability. The presence of odorization, when required, shall be positively verified by the dealer by a sniff test or other means, and the results shall be documented prior to delivery into his bulk plant, or when a shipment bypasses a bulk plant, prior to delivery to a consumer. It is the intent of this Paragraph to prohibit the sale or delivery of liquefied petroleum gas by a dealer to a consumer without the required odorization.

4. The odorization requirement shall be considered to be met by the use of 1 pound of ethyl mercaptan, 1 pound of thiophane, or 1.4 pounds of amyl mercaptan per 10,000 gallons of liquefied petroleum gas, subject to the provisions of Paragraph 5 of this Subsection.

5. In order to maintain the minimum concentrations of odorant in the liquefied petroleum gas at the point of use by the consumer, the rules and regulations recommend that each person who is required to odorize gas under this Section use 1 1/2 pounds of odorant per 10,000 gallons of liquefied petroleum gas at the point of odorization.

6. The only approved odorants are those specified in Paragraph 4 of this Subsection; however, the commission may authorize, by rule, the use of other odorants which are equal in effectiveness to the odorants specified in Paragraph 4 of this Subsection.

7. The commission shall require each person who transports liquefied petroleum gas that is exempt from the odorization requirements of this Section to keep records of all purchases of unodorized gas for 3 years. The records shall include bills of lading, loading tickets and records of all deliveries of unodorized gas. Each delivery ticket and bill of lading shall be identified by reference to the bill of lading number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:558 (May 1985), LR 29:2510 (November 2003), amended LR 38:1262 (May 2012).

§131. Compliance with Rules

A. Compliance with all other applicable rules and regulations is a mandatory requirement for all permit holders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 38:1263 (May 2012).

§133. Shall Purchase Containers Manufactured by Manufacturers Acceptable to the Authority Having Jurisdiction

A. All liquefied petroleum gas containers purchased shall be manufactured by a manufacturer acceptable to the commission. A list of such manufacturers shall be furnished by the commission upon request.

B. A manufacturer of liquefied petroleum gas containers shall be listed by the commission as acceptable when it has met or exceeded the requirements of Chapter 5, NFPA 58, 2008 edition and provided documentation acceptable to the commission of the same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:465 (March 1998), LR 38:1263 (May 2012).

§135. Condemnation of Tanks

A. Any liquefied petroleum gas storage container corroded, pitted or worn to 20 percent of the thickness of the head, shell plate, or stand pipe shall be condemned for further storage of liquefied petroleum gas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 38:1263 (May 2012).

§139. Liquefied Petroleum Gas Systems

A. A dealer shall not serve any liquefied petroleum gas system which the dealer knows is improperly installed or in a dangerous condition. All improper systems shall be corrected before the dealer services such system with fuel for the first time. A servicing dealer shall not be responsible for unauthorized changes in or failures of an existing system or connected appliances that have been tested, checked and found in compliance with commission rules and regulations.

B. In the interest of safety and for the protection of life and property, any end user who authorizes the maintenance and/or repair, installation, adjustment, and servicing of a liquefied petroleum gas system in the state of Louisiana shall insure that any person, firm, or corporation that may be employed and/or authorized to make such repairs has a current permit or registration and cards of competency from the commission to perform maintenance and/or repair, installation, adjustment and/or servicing of that system.

C. Any end user authorizing any action listed in §139.B, where such actions are completed by any person, firm, or corporation other than the liquefied petroleum gas dealer who normally services the liquefied petroleum gas system, shall notify, as soon as possible, the servicing dealer authorized to service the affected liquefied petroleum gas system. This notification shall include:

1. name of the person, firm, or corporation that performed the service; and

2. actions taken to the affected liquefied petroleum gas systems such as adding piping, space heaters, and other such appliances. The end user shall make the described notification within five working days after completion of the action or before the liquefied petroleum gas system is next serviced with liquefied petroleum gas, whichever occurs first.

D. It is unlawful for any person, firm, or corporation to repair, install, adjust and/or service any liquefied petroleum gas system without meeting the requirements of the commission.

E. No person, firm, or corporation, except the owner, thereof, or person, firm, or corporation authorized in writing by said owner, shall fill, refill, buy, sell, offer for sale, give, take, loan, dispose of, or traffic in, a liquefied petroleum gas container or tank.

F. No individual shall be subject to a criminal fine or imprisonment under §139 as a result of any willful and wrongful acts of a fellow employee or subordinate employee whose willful and wrongful act was carried out without the knowledge of the individual. Whoever is found to be guilty of any of the following acts shall be fined not more than \$50,000, or imprisoned with hard labor for not more than 10 years, or both:

1. willful or knowing violation of a rule or regulations of the commission which endanger human life or health;
2. failure to properly odorize gas or to verify the presence of odorant pursuant to R.S. 40:1846 and §129 of this Subchapter.

G. Anyone violating §139 shall also be liable for all damages resulting from any fire or explosion involving that shipment. The liability imposed by §139 shall not be delegated by contract or practice to any transporter or subcontractor responsible for the transportation of the liquefied petroleum gas.

H. A permit may be suspended or revoked by the commission whenever the commission has assessed two or more penalties against a dealer for willful violation of, or failure to comply with, such rules and regulations, provided the second or succeeding penalty or penalties have been imposed for violations of, or failure to comply with the regulations of the commission committed after the imposition of the first penalty or forfeiture, reserving to the dealer the right to resort to the courts for reinstatement of the permit suspended or revoked. The commission may suspend or revoke the permit of any person who fails to pay any civil penalty imposed by the commission under the provisions of R.S. 40:1846.1(E) within 30 days after the assessment becomes final. Any dealer who continues to operate after such permit is revoked or during the period of such suspension shall be liable to prosecution under the provisions hereof in the same manner as if no such permit had ever been issued. A permit may be revoked or suspended only by a ruling of the commission based on adjudicatory hearing held in accordance with the Administrative Procedure Act. The commission may institute civil proceedings to enforce its rulings in the district court for the parish in which the commission is domiciled or in the district court for the parish in which the violation occurred.

I. No dealer shall service a liquefied petroleum gas system, tank or another dealer after having received notification by the commission that the system, tank or dealer is not in compliance with these rules and regulations. An All Dealers (AD) letter which states that a system, tank or dealer is not in compliance posted on the commission's public website shall constitute notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 15:860 (October 1989), LR 24:465 (March 1998), LR 29:2510 (November 2003), LR 38:1263 (May 2012).

§141. Customer Notification

A. Each dealer shall transmit a notice once each year to each customer stating that liquefied petroleum gas systems are potentially dangerous, that a leak in the system could result in a fire or explosion, and that systems should be inspected periodically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:559 (May 1985), LR 38:1264 (May 2012).

§143. Inspections

A. Each dealer facility subject to the regulations of the commission shall submit to an inspection by a representative of the commission at least once every three years, which inspections may be conducted without prior notice by the commission or its representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:559 (May 1985), LR 38:1264 (May 2012).

§145. Dealer Permit Requirements

A. Permits required under these general requirements shall not be transferred. All dealers, regardless of operation, shall hold a permit and are prohibited from operating under a permit of another dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:559 (May 1985), LR 38:1264 (May 2012).

Subchapter C. Manufacturers of Liquefied Petroleum Gas Containers

§147. Bond

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 7:634 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:466 (March 1998), LR 38:1264 (May 2012).

§151. Classification of Containers

A. Containers shall be designed and classified as provided in the applicable Sections of the Chapter 5, National Fire Protection Association Pamphlet Number 58, 2008 edition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 7:634 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:466 (March 1998); LR 38:1264 (May 2012).

§155. Data Reports

A. Manufacturers shall mail two copies of the data report to the dealer making the purchase on the date of shipment.

B. The reverse side of each manufacturer's data report shall include the following form to be filled out by the manufacturer.

This vessel constructed in accordance with plans and specifications as shown on our drawing number.
Louisiana Liquefied Petroleum Gas Commission
Catalogue Number _____
Approved _____ 20 _____
Signed _____
(Name of Mfg.)
By _____
Title _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 15:860 (October 1989), LR 38:1265 (May 2012).

Subchapter D. Forms and Reports

§159. Required Forms and Reports

A. The following forms and/or reports shall be filed with the Office of the Director:

1. Installation Reports shall be properly completed and witnessed by the customer or his/her authorized representative. This includes installed or re-installed tanks and the completed form shall be maintained in the dealer's files. These documents shall be made available to the commission within 15 days of request. Pressure tests shall be documented on the installation report when a container is installed or reinstalled. In other cases where pressure tests are required (See §167 and §175), the pressure tests may be filed with the commission on an installation report form and noted as such. Documentation of pressure tests shall be maintained by the dealer.

2. Sketches shall be filed with the office of the director for initial approval. Final approval shall be granted by the office of the director after installation but prior to placing into service the following liquefied petroleum gas systems:

- a. school buses/mass transit vehicles;
- b. dealer bulk storages;
- c. liquid withdrawal systems, except systems for private use;
- d. places of public assembly, schools, churches, hospitals, nursing homes and other similar systems (either liquid or vapor systems);
- e. automatic dispensers used for motor fuel as required by LAC 55:IX.163.C;
- f. sketches for Class VI-X installations shall be filed with the office of the director for initial approval. The commission reserves the right to allow this installation to be placed in service prior to final inspection. Upon inspection, if this installation is deemed to be out of compliance with the

commission's rules and regulations, the servicing dealer shall remove all LPG cylinders from the installation within 24 hours. Dealer shall correct all deficiencies and then request a final inspection and approval of the installation. The installation shall remain out of service until final approval is granted by the commission.

3. reports of fires and accidents in accordance with §125.

4. documentation in accordance with §147.

5. proof of insurance or financial security in accordance with §107.A.3 or §107.A.3.a.

6. drawings in accordance with §113.A.11.c.

7. Reports in accordance with §107.A.6.a.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:559 (May 1985), LR 15:861 (October 1989), LR 24:466 (March 1998), LR 38:1265 (May 2012).

Subchapter E. Automatic Dispensers Used for Motor Fuel

§163. Automatic Dispensers Used for Motor Fuel

A. Automatic dispensers shall be permitted when a liquefied petroleum gas dealer enters into a contractual arrangement with a purchaser under a gas card-lock or other item or device to unlock or operate dispensing equipment for motor fuel when all requirements of this Section are met.

B. Automatic Dispensing Prohibited. The use of self service, coin operated, credit card or any other pump-activating automatic fuel dispensing device is prohibited at any retail station for use by the general public. The filling of ICC or DOT cylinders is prohibited.

C. A sketch shall be submitted to the office of the director detailing within 150 feet of the dispenser and the fuel storage container. This sketch shall include distances to buildings, roads, streets, property lines, railways, other flammables and the details of the dispensing unit and be approved before installation. After installation and before use, the installation shall be inspected and the sketch finalized by the office of the director.

D. Installations of Automatic Dispenser

- 1. Hose length shall not exceed 18 feet.
- 2. Dispensing device shall be located 10 feet from any dispensing device for Class 1 liquids.
- 3. All piping shall be Schedule 80 and all pipe fittings shall be forged steel having a minimum design pressure of 2,000 psi.
- 4. An excess flow valve shall be installed in the liquid and vapor piping in such a manner that displacement of the dispenser will result in the shearing of such piping on the downstream side of the excess flow valve.
- 5. Automatic dispensing system shall incorporate an Emergency Shut-off Valve (ESV) upstream from the pump, installed in accordance with its manufacturer's instructions.
- 6. The transfer hose downstream from the meter shall incorporate a pull-away device.
- 7. Each automatic dispensing system shall include a switch which requires the operator's constant manual activation to maintain a fuel flow. Overriding of such switch is prohibited.

8. Step-by-step operating instructions and fire emergency telephone numbers shall be posted in a conspicuous place in the immediate vicinity of the automatic dispenser.

9. Immediate vicinity of automatic dispenser shall be well lit during all hours of darkness.

10. A dealer who installs an automatic dispenser shall provide contractual purchaser with written instructions to operate dispenser. The contractual purchaser shall be cautioned to study and preserve such instructions and procedures, and to educate all those with access under his contract to the automatic dispenser in the proper operating procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1402 (December 1994), amended LR 24:467 (March 1998), LR 38:1265 (May 2012).

Subchapter F. Tank Trucks, Semi-Trailers and Trailers

§165. Measurement

A. All trucks delivering liquefied petroleum gas for domestic use shall be equipped with a suitable measuring device which shall be used to accurately gauge the amount of gas placed in each system, either by meter or by weight.

B. Truck meters shall be calibrated at least once every two years or every 1 million gallons of gas delivered, whichever occurs first. Calibration reports shall be retained by the dealer in his truck file for at least three years. The commission reserves the right to review calibration reports upon demand.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1402 (December 1994), amended LR 24:467 (March 1998), LR 38:1266 (May 2012).

§166. Transport/Delivery Truck Registration Decals and Inspections

A. Dealers who operate transport and/or delivery trucks in the state of Louisiana shall file Form DPSP 8045 (R/97) with the office of the director between the dates of February 1 and April 30 each year to register and pay the required registration fees on all transport and/or delivery trucks used in Louisiana. New equipment and equipment being used for the first time in Louisiana and not registered during the registration period shall be registered and inspected before operating over the highways of the state. Upon payment of the required fee, a registration decal shall be issued on Form 8044 (R/97) by the office of the director or a registration decal by a commission inspector to be displayed on the registered equipment. It shall be a violation of the commission rules to operate a transport and/or delivery truck over the highways of the state without the registration decal affixed.

B. Safety inspections are required on all transport and/or delivery trucks requiring registration. The required safety inspection shall be performed on all transport and/or delivery trucks registered on Form 8045 (R/97) and used in Louisiana, within a three month period prior to or a three month period subsequent to their registration. Safety inspections on transport and/or delivery trucks registered on

Form 8045 (R/97) and not being used currently in Louisiana shall either:

1. be inspected the same as those being used; or
2. apply for a waiver of the inspection, in writing, prior to its inspection due by date. Transport and/or delivery trucks granted a waiver of inspection shall be inspected prior to their use in Louisiana. Safety inspections shall be performed by:

- a. an inspector of the commission.
- b. a qualified agency acceptable to the commission with acceptable documentation, that a safety inspection has been performed by that qualified agency.

3. Safety inspections performed by a commission inspector within the state of Louisiana shall be free of charge.

4. Safety inspections performed by a commission inspector outside of the state of Louisiana shall be subject to travel reimbursement to the commission from the permit holder(s) for which the travel was performed in accordance with Policy and Procedure Memorandum 49 guidelines. This travel shall be requested by the out of state permit holder and out of state travel shall be solely at the discretion of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:467 (March 1998), amended LR 25:2412 (December 1999), LR 27:2256 (December 2001), LR 38:1266 (May 2012).

§167. "Out-of-Gas Customers" or Interruption of Service Procedure

A. When a delivery of gas is made to any on-site container which is out of gas or the liquefied petroleum gas service was interrupted, the servicing dealer shall follow the following procedures.

1. When "out-of-gas customer" is not present and the container is serviced:

- a. shut off the container service valve;
- b. place a tag on the container and the residence, the building, or the equipment the container services indicating the container is out-of-service. The tag shall inform the gas customer to contact a liquefied petroleum gas dealer or other qualified agency to perform a leak check or test on the system as required before turning on the container. Further action is the responsibility of the customer. If the customer places the system back into service without the required test, he assumes liability for the system.

2. When "out-of-gas customer" is present and the container is serviced:

- a. shut off the container service valve;
- b. inform the gas customer the container is out of service and a qualified agency shall perform a leak check or test on the system as required before turning on the container. Further action is the responsibility of the customer. If the customer places the system back into service without the required test, he assumes liability for the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 24:467 (March 1998), LR 33:1142 (June 2007), effective July 1, 2007, LR 38:1266 (May 2012).

§169. Maintenance

A. All piping and auxiliary equipment shall be maintained in good mechanical condition at all times so as to eliminate in so far as possible all hazards to safe operation.

B. Vehicles and all components of vehicles shall be maintained in good mechanical condition at all times so as to prevent hazards to safe operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), LR 38:1267 (May 2012).

Subchapter G. Systems Utilizing ASME and D.O.T. Containers

§171. Storage Capacity Requirements

A. The minimum capacity of above ground ASME storage containers shall be 100 gallon tank capacity for each 100,000 BTU appliance load. Tankless water heaters shall be rated at 50 percent of their input rating when calculating appliance load. Exception: D.O.T. Containers of 4 lbs. though 100 lbs. capacity are exempt from this requirement when connected to small portable appliances or outdoor cooking appliances with input ratings of 100,000 btu/hr. or less. Other exceptions to this rule shall be approved by the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 33:1142 (June 2007), effective July 1, 2007, LR 38:1267 (May 2012).

§172. Maintenance

A. ASME and DOT containers, container appurtenances, piping, and equipment connected thereto shall be maintained in good mechanical condition at all times. No leaks or unsafe conditions shall exist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 25:2412 (December 1999), amended LR 38:1267 (May 2012).

§173. Regulator Installation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 24:468 (March 1998), LR 33:1142 (June 2007), effective July 1, 2007, LR 38:1267 (May 2012).

§175. Pressure Test, Leak Checks, and Inspection Required

A. Pressure Tests

1. Shall be performed on all new piping systems and on piping systems that has been modified or had new piping added.

2. The length of time of the pressure test shall be not less than 1/2 hour for each 500 cubic feet of pipe volume or fraction thereof, except when pressure testing less than 10 cubic feet of pipe volume or a single family dwelling, the duration of the test may be reduced to 15 minutes.

3. The test pressure of the Pressure Test shall be 1 1/2 times the proposed operating pressure of the system but in no case less than 3 psig.

4. There shall be no gain or loss in pressure during the test. If leakage is indicated, the system shall be repaired and a new pressure test performed before placing in service.

5. The pressure source shall be isolated before the test.

6. No underground piping shall be covered until after inspection and the pressure test are made.

7. Pressure tests shall be documented in the dealer's files.

B. Leak Checks

1. Low Pressure Leak Checks

a. Shall be used on systems that receive gas at pressures of 1/2 psig or less.

b. Shall be performed the first time a tank, piping system and appliances are connected for use.

c. Shall be performed in any suspected leak situation.

d. Shall be performed the first-time service of a new customer.

e. Shall be performed in all out-of-gas and interruption of service situations. A High Pressure Leak Check will be permitted in lieu of the Low Pressure Leak Check if the dealer has documented in his files a Low Pressure Leak Check within the past 12 months for that customer or has filed such documentation with the office of the director within the past 12 months for that customer.

f. The length of time for this test shall be 3 minutes.

g. The test pressure for this test shall be 9 inches + or - 1/2 inch of water column or equivalent.

h. Low Pressure Leak Checks shall be documented in the dealer's files.

i. This leak check shall include all regulators, including appliance regulators and control valves in the system. Accordingly each individual equipment shutoff valve should be supplying pressure to its appliance for this leak check. This leak check shall prove the integrity of the 100 percent pilot shutoff of each gas valve so equipped, so the manual gas cock of each gas valve incorporating a 100 percent pilot shutoff should be in the "on" position. Pilots not incorporating a 100 percent pilot shutoff valve and all manual gas valves not incorporating safety shutoff systems shall be placed in the "off" position prior to this leak check.

j. When leakage is indicated, repairs shall be made and a new leak check performed before placing the system back into service.

k. The following protocol shall be used for performing this leak check. Insert a water manometer or equivalent gauge into the system downstream of the final stage regulator, pressurizing the system with either fuel gas or another approved test medium to full operating pressure, close pressure service valve, observe gauge reading, lockup, should be between 10-14 inches of water column or equivalent, then release enough test medium through a range burner or other suitable means to drop the system pressure to 9 inches + or - 1/2 inch in water column or equivalent. This ensures that all regulators are unlocked and the entire system is communicating to the gauging device. There shall be no loss or gain in pressure for a period of three minutes.

2. High Pressure Leak Checks

a. This leak check may be used on a system that receives gas at 1/2 psig or less, when a Low Pressure Leak Check has been performed and documented within the past 12 months by the dealer for that system. This type leak check may be performed once annually when access to the gas utilization equipment is not accessible.

b. This leak check may be used on systems that receive gas at pressures greater than 1/2 psig but less than tank pressure.

c. The length of time for this leak check is 3 minutes.

d. The test pressure for this leak check is 10 pounds below tank pressure.

e. These tests shall be documented in the dealer's files.

f. When leakage is indicated, repairs shall be made and a new leak check performed before placing the system into service.

g. The following protocol shall be used for this leak check. By inserting a pressure gauge between the container gas shutoff valve and the first stage regulator in the system, admitting full container pressure to the system and then closing the container shutoff valve. Enough gas should then be released to lower the pressure reading by 10 psi. System should then be allowed to stand for 3 minutes without an increase or decrease in the pressure gauge reading. This method will indicate if there is an open line, open valve, a standing pilot open or leak anywhere in the system and can be used only under the conditions stated in §175 B(2)(a) and (b) of this Section.

3. In out-of-gas or interruption of service situations and a leak check cannot be performed by the dealer, the procedure in §167 of this Code shall be used or the container cannot be serviced.

C. Inspections

1. Inspections shall be performed any time a pressure test, a high pressure leak check, or a low pressure leak check is performed. Exception: if the dealer has documented in his files an inspection of the system within the past 12 months for that system, no inspection is required.

2. Inspection shall include installation workmanship, all visible piping materials, connectors, appliances and other materials to ensure all materials, connectors, valves and appliances are approved for liquefied petroleum gas use.

3. Inspection shall include proper appliance installation and proper flame performance characteristics for the appliances.

4. Any materials, connectors, valves, appliances, or installation workmanship not in compliance with the codes shall be repaired, replaced, or disconnected.

5. Documentation that the inspection was performed shall be made by the dealer and retained in his files.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 24:468 (March 1998), LR 24:2312 (December 1998), LR 29:2510 (November 2003), LR 33:1142 (June 2007), effective July 1, 2007, LR 38:1267 (May 2012).

§177. Appliance Installation and Connections

A. Use of Approved Appliances. Domestic and commercial gas consuming appliances shall not be installed unless their correctness to design, construction and performance is certified by one of the following:

1. determined by a nationally recognized testing agency adequately equipped and competent to perform such services and shall be evidenced by the attachment of its seal or label to such gas appliance. This agency shall maintain a program of national inspection of production models of gas appliances at least once each year on the manufacturer's premises. Approval by the American Gas Association Laboratories (AGA) as evidenced by the attachment of its listing symbol or approval seal to gas appliances and a certificate or letter certifying approval under the abovementioned requirements or listing by Underwriter's Laboratories Inc. (UL) be considered as constituting compliance with the provisions of this Section;

2. approved by the commission.

B. Appliance Installation and Connection

1. An appliance shall be installed in accordance with its manufacturer's instructions.

2. In the absence of complete manufacturer's instructions on installation of any appliances, installation shall be in accordance with the edition of NFPA Number 54, the National Fuel Gas Code, adopted by the commission.

C. Exceptions

1. Existing installations, where piping outlets and appliances were installed in accordance with regulations which were in effect at the time of such installation, shall remain approved. This exception includes the removal of existing appliances for servicing or replacement of appliances with the same type or of equal or better quality. This exception does not allow adding new piping, appliance locations, or new appliances where there was no pre-existing appliance without meeting §177A. and B.

2. Installation of Heaters in Residences. The following liquefied petroleum gas room heaters may be installed in a residence that is a one or two family dwelling and that is not a manufactured home, mobile home, or a modular home.

a. A listed wall-mounted liquefied petroleum gas unvented room heater equipped with an oxygen depletion safety shut-off system may be installed in the bathroom of a one or two family, residential dwelling provided that the input rating shall not exceed 6,000 Btu per hour, and combustion and ventilation air is provided in accordance with Paragraph 10.1.2 of the National Fuel Gas Code, NFPA-54, that the commission adopted.

b. A listed wall-mounted liquefied petroleum gas unvented room heater equipped with an oxygen depletion safety shut-off system may be installed in the bedroom of a one or two family, residential dwelling provided that the input rating shall not exceed 10,000 Btu per hour, and combustion and ventilation air is provided in accordance with Paragraph 10.1.2 of the National Fuel Gas Code, NFPA-54, that the commission adopted.

3. Liquefied petroleum gas room heaters may be installed in used manufactured homes, mobile homes and modular homes as follows if they are:

a. liquefied petroleum gas listed vented heaters equipped with a 100 percent safety pilot and vent spill switch; and

b. liquefied petroleum gas listed unvented room heaters equipped with a factory oxygen depletion safety shut-off system; and

c. they are not installed in sleeping quarters or bathrooms; and

d. their installation is not prohibited by the appliance manufacturer's instructions; and

e. the input rating of the heater(s) does not exceed 20 Btu per hour per cubic foot of space; and

f. combustion and ventilation air is provided as specified in Part 9.3 of the National Fuel Gas Code, NFPA-54, 2009 edition, that the commission has adopted.

4. Exceptions, other than those listed herein, shall be approved by the director of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1403 (December 1994), amended LR 24:469 (March 1998), LR 25:2412 (December 1999), LR 38:1268 (May 2012).

Subchapter H. Specification for Liquefied Petroleum Gas Installations at Schools and Places of Public Assembly

§179. Requirements for Plans and Specifications

A. Sketches and specifications including plot plans shall be submitted to the office of the director for approval before installation.

B. Sketch and specifications shall show the following:

1. type of building (frame, masonry, metal walls, etc.);
2. elevation from ground level to building;
3. the size and location of all gas piping and length of runs;
4. the size and location of the tank or container;
5. the location and Btu rating of all appliances;
6. the total Btu load;
7. all other details related to the proposed installation as required in §179.

C. The following is a clarification of the requirements for new sketches at schools, churches, nursing homes, and other places of public assembly:

1. Where any additional piping is added, the installation of a new appliance or the change out of an appliance with one with a higher BTU load, a new sketch is required to be submitted to the office of the director for approval.

2. Replacement of a storage tank or container requires a new sketch to be submitted to the office of the director for approval.

3. A new sketch is required when changing fuel suppliers at all places of public assembly, even when no changes are made in the liquefied petroleum gas system.

D. In all cases, an installation report is required with the installation of a container, tank, or cylinder at schools, churches, nursing homes, and other places of public assembly.

E. The commission reserves the right to make a final inspection and witness a pressure test through an inspector of the commission before approving the sketch and allowing the system to be placed into service at all schools, churches, nursing homes, and other places of public assembly.

F. The minimum capacity of storage containers, tanks, or cylinders shall be 100 gallons capacity per each 100,000 Btu appliance load at all schools, churches, nursing homes, and other places of public assembly. Exceptions to this rule may be made by the director of this commission.

G. Fences are required for storage containers, tanks, and cylinders at all schools, all nursing homes, and all churches with schools or day-care facilities on site. Fences may be required at other places of public assembly when deemed necessary in the interest of public safety by the office of the director. The commission may approve a request for an exemption from the fencing requirements under extenuating circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1404 (December 1994), amended LR 24:470 (March 1998), LR 31:2568 (October 2005), LR 38:1269 (May 2012).

Subchapter I. Adoption of Standards

§181. National Fire Protection Association Pamphlet Numbers 54 and 58

A. The Liquefied Petroleum Gas Commission hereby adopts the *National Fuel Gas Code*, 2009 edition. The National Fire Protection Association designation is *NFPA 54-2009*. The Liquefied Petroleum Gas Commission also adopts the *Standard for the Storage and Handling of Liquefied Petroleum Gases*, 2008 edition. The National Fire Protection Association designation is *NFPA 58-2008*.

B. The commission may adopt subsequent editions of these standards by a rule change in accordance with the Administrative Procedure Act.

C. Any published Liquefied Petroleum Gas Commission rules and regulations shall take precedence over the standards referenced and adopted in §181.A.

D. The commission reserves the right to make an exception to §181.A, as it applies to local conditions as it deems necessary in the interest of public safety.

1. Any installation that is in use and was installed in Louisiana that meets previous rules and regulations promulgated by this commission may remain in use until the systems require evacuation or replacement. Upon evacuating or replacing any installation, the system shall comply with §181.A.

E. The following are exceptions to the code and standard referenced in §181.A:

1. Pursuant to §5.6.6, *Protective Coatings*, NFPA 54-2009 edition, galvanized pipe and fittings, copper pipe and fittings, and copper tubing and fittings may be used to meet this requirement.

2. Pursuant to §7.1.2., *Protection against Damage*, NFPA 54-2009 edition, pipe shall be buried at a minimum to the depth of the frost line and shall be protected where there is heavy vehicular traffic and protected against physical damage where such damage is reasonably expected.

3. Pursuant to §7.1.3, *Protection against Corrosion*, NFPA 54-2009 edition, the provisions shall be considered met in Louisiana when galvanized pipe and fittings, copper pipe and fittings or copper tubing and fittings are used.

4. Pursuant to §6.24.3.14 and §6.24.3.15, *Emergency Shut-off of Power*, NFPA 58-2008 edition, the provisions of §6.24.3.14 and §6.24.3.15 shall be considered met in Louisiana if the operator has provided an alternative to shut off power in the event of a fire, accident or other emergency other than the switch(es) or circuit breaker(s) located at the dispenser(s).

5. Pursuant to §6.7.2.7, *Installation of Pressure Release Devices*, NFPA 58-2008 edition, the provisions of §6.7.2.7 shall be considered met in Louisiana notwithstanding the requirement that there be a seven foot distance from the pressure relief valve to the point of discharge.

6. Pursuant to §6.24.3.13, *Shut-Off Valve on End of Transfer Hose*, NFPA 58-2008 edition, the provisions of §6.24.3.13 shall be considered met in Louisiana if a listed quick-acting shut off valve with positive lock off or a listed globe valve is installed at the discharge end of the transfer hose.

7. Pursuant to §7.4.3.1, NFPA 58-2008 edition, the maximum permitted filling limit for any container, where practical, shall be determined by weight. DOT specification cylinders of 200 lbs. propane capacity or less that are in commerce or transportation shall be filled by weight only. Exceptions:

a. DOT cylinders filled from bobtails at customer facilities, if equipped for filling by volume and are not transported over the highways of the state of Louisiana. An example is forklift cylinders filled by bobtails and used on premises and not placed in transportation over the highways of the state of Louisiana;

b. DOT cylinders filled by customers from customer tank facilities, if equipped for filling by volume and are not transported over the highways of the state of Louisiana. An example is forklift cylinders filled by customers from their tanks and used on their premises and not placed in transportation over the highways;

c. DOT cylinders that are permanently affixed if equipped for filling by volume. Examples are motor fuel tanks or DOT cylinders permanently affixed to recreational vehicles.

8. Pursuant to §5.2.2, NFPA-58-2008 edition, DOT cylinders of 100 lbs. or less shall not be filled, continued in service, or transported unless they are properly qualified or requalified for L.P. gas service, if they are in commerce or transportation. Transportation of empty cylinders for requalification or disposal shall not be a violation of this rule. DOT cylinders of 100 lbs. or more shall not be refilled, continued in service or transported unless they are properly qualified or requalified for L.P. gas service in accordance with DOT regulations, meaning in commerce and transportation. Transportation of empty cylinders for requalification or disposal shall not be a violation of this rule. Qualification or requalification shall be in accordance with C-3.2 of Annex C, NFPA 58- 2008 edition. In addition to the requirements of C-3.2 of Annex C, NFPA 58-2008 edition, each cylinder that has successfully passed requalification shall be marked with a RIN issued by the DOT in accordance with applicable DOT statutes and/or regulations. This requirement shall be effective for all requalifications after May 8, 2003. Variation from the marking requirement may be approved by the associate

administrator of the DOT and those variations shall be accepted by Louisiana as being in compliance.

9. Pursuant to §9.3.2.9, NFPA 58-2008 edition, containers having an individual water capacity not exceeding 108 lb. (49 kg) [nominal 45 lb. (20 kg) LP-Gas] capacity transported in open vehicles and containers having an individual water capacity not exceeding 10 lb. (4.5 kg) [nominal 4.2 lb. (2 kg) LP-Gas] capacity transported in enclosed spaces of the vehicle shall be permitted to be transported in other than the upright position, however may not be transported in the upside-down position or resting on an individual water capacity exceeding 108 lb. (49 kg) [nominal 45 lb. (20 kg) LP-Gas] capacity transported in open vehicles and containers having an individual water capacity exceeding 10 lb. (4.5 kg) [nominal 4.2 lb. (1.9 kg) LP-Gas] capacity transported in enclosed spaces shall be transported with the relief device in direct communication with the vapor space.

10. Pursuant to §8.4.2.2, NFPA 58-2008 edition, the following provisions shall be met:

a. All curb stops used as crash protection shall be at least 5 feet from the cage, 5 inches high and staked into the ground.

b. All posts, if used as crash protection, shall be metal at least 2 inches in diameter, 20 inches above ground level, at least 2 feet from the cage and no more than 4 feet apart.

c. Each cage shall have a "No Smoking" sign, the name of the permit holder and the suppliers name affixed to the cage.

d. All ignition sources, including any appliances, or the cabinets of appliances, such as coke machines, water coolers, electric dispensing machines etc., shall be at least 5 feet from the cage.

e. Cages shall be at least 5 feet from points of public gatherings such as pay phones, benches, smoking areas, and break areas.

f. Cages housing L.P. Gas Dot cylinders shall be located a minimum of 5 feet from any line of adjoining property.

11. The provision §5.20.6, NFPA 58-2008 edition (the use of approved appliances for mobile homes, manufactured homes and recreational vehicles), is superceded by §177(A).

12. Pursuant to §6.6.1.6, *Flotation Prevention-Clarification*, NFPA 58-2008 edition, installations requiring flotation prevention measures may use either commission's guidelines or use methods or products from a qualified agency with proper documentation acceptable to the commission.

13. In addition to the provisions in §7.3.5, *Piping in floors of buildings*, NFPA-54-2009 edition and §6.9, *Underground Piping*, NFPA-54-2008 edition and due to the possibility of soil substance and foundation failures in buildings, all LP gas piping shall be properly protected in a suitable leak free conduit that would be installed under and/or through any concrete slab or masonry wall of any building.

14. Pursuant to §6.18.2.1, *Installation of Liquid Transfer Facilities*, NFPA 58-2008 edition, when vented L.P. gas is used as the sole method of transferring liquid L.P. gas from one container to another (i.e. pressure differential, gravity filing), the distances in table 6.5.3 shall be doubled.

15. Pursuant to §6.23, *L.P. Gas on Vehicles (other than engine fuel systems)*, NFPA 58-2008 edition, the office of the director may establish inspection procedures (including decals of approval) for mobile units utilizing L.P. gas to fuel appliances. These inspection procedures would be in addition to applicable regulations of NFPA-58, 2008 edition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1404 (December 1994), amended LR 24:470 (March 1998), LR 25:1263 (July 1999), LR 25:2412 (December 1999), LR 27:2257 (December 2001), LR 31:2568 (October 2005), LR 37:913 (March 2011), LR 38:1269 (May 2012).

§183. Use of Liquefied Petroleum Gas as a Refrigerant Prohibited

A. No person, firm, or corporation shall use, sell, or distribute liquefied petroleum gas for use in mobile air conditioning systems.

B. To determine if a refrigerant is liquefied petroleum gas, the proper shipping name shall be used. Proper shipping names with a U.N. number and a hazard class and division number of liquefied petroleum gas per the DOT hazardous materials tables shall be prima facie evidence that the refrigerant is liquefied petroleum gas and is prohibited.

C. Any advertising or other literature published by the manufacturer of a refrigerant promoting it as a replacement or drop-in for CFR-12 or HFC 134a, or both, shall be prima facie evidence that it is being sold for mobile air conditioning systems and is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 23:990 (August 1997), amended LR 29:2511 (November 2003), amended LR 38:1271 (May 2012)

Chapter 2. School Bus and Mass Transit Installations [formerly Chapter 12]

Editor's Note: This Chapter applies to liquefied petroleum gas systems supplying liquefied petroleum gas to propel school buses and mass transit vehicles.

§201. Applications/Sketches and Approval of School Bus and Mass Transit Vehicles; Final Inspections; Registrations; Renewal Registrations

A. Prior to the initial installation of a liquefied petroleum gas system used as a motor fuel system on any school bus or mass transit vehicle, either public or private, an application/sketch shall be submitted to a commission inspector for review and initial approval. The name of the dealer making the installation shall be stated on the application/sketch.

1. Exceptions

a. When an original equipment manufacturer (OEM) installed the liquefied petroleum gas system, the initial installation review and initial approval requirement of Part A is waived; however an application/sketch, registration, and final inspection shall be performed prior to placing into service.

b. When the installation of the liquefied petroleum gas system is made out-of-state, the initial installation review and initial approval requirement of Part A is waived; however, the application/sketch, registration, and final inspection shall be performed prior to placing into service.

B. After installation of the liquefied petroleum gas system but prior to placing into service, the vehicle(s) shall be registered with the commission, by means of the application/sketch and evidenced by a registration decal affixed to the vehicle.

C. A renewal registration shall be made annually by the owner, between February 1 and April 30. Renewal registration forms shall be mailed from the office of the director to the previous year's registrants.

D. After installation of the liquefied petroleum gas system but prior to placing into service, a final inspection shall be made by an inspector of the commission.

E. A liquefied petroleum gas dealer or owner shall not fuel any school bus/mass transit vehicle with liquefied petroleum gas to which a current registration decal is not permanently affixed.

F. It shall be a violation of the commission rules and regulations for an owner to operate any school bus/mass transit vehicle which is propelled by liquefied petroleum gas, to which a current registration decal is not permanently affixed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 18:866 (August 1992), amended LR 24:471 (March 1998), LR 26:1488 (July 2000), LR 38:1271 (May 2012).

§203. Inspections

A. A final inspection by an inspector of the commission is required on all newly installed liquefied petroleum gas systems.

B. The commission reserves the right to make an inspection of a liquefied petroleum gas system at any time.

C. All school bus/mass transit vehicles with renewal registrations shall be inspected between May 1 and July 31 by an inspector of the commission. It shall be a violation of the commission rules and regulations to operate a school bus/mass transit vehicle without the required annual inspection.

D. A liquefied petroleum gas dealer shall not fuel any school bus/mass transit vehicle which has been condemned or placed out-of-service by the commission and notification published in an all dealer letter (A.D.).

E. No liquefied petroleum gas system shall be placed into service on any school bus/mass transit vehicle which does not comply with this Chapter and Chapter 11 of NFPA 58 of the 2009 edition, that the commission has adopted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:471 (March 1998), amended LR 26:1488 (July 2000), LR 38:1271 (May 2012).

§205. Installation of Liquefied Petroleum Gas Systems Used as Engine Fuel System for School Bus/Mass Transit Vehicles

A. Installation of a liquefied petroleum gas system used as an engine fuel system for school bus/mass transit vehicles shall be in accordance with the applicable sections of Chapter 11 of the NFPA 58 of the 2009 edition that the commission has adopted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 24:471 (March 1998), amended LR 26:1488 (July 2000), LR 38:1271 (May 2012).

§207. Fueling

A. Vehicles covered in this Chapter are prohibited from being fueled at schools and other places of public assembly within 50 feet of the property line.

B. Vehicles are prohibited from being fueled while passengers are on board or within 50 feet of liquid transfer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 18:866 (August 1992), amended LR 24:472 (March 1998), LR 38:1272 (May 2012).

Chapter 3. Emergency Powers

§301. Procedure

A. During a declared emergency or disaster by the governor, the commission may delegate authority to the director for the purposes of waiving any rule under Part IX of Title 55 that does not materially affect safety.

B. The delegation shall be by majority vote of the commission.

C. If the commission cannot meet in person to vote on the delegation due to an inability to travel because of the declared emergency or disaster, the director may make contact with each commissioner by any form of communications available at the time.

D. The director shall make a written record of each vote cast by the individual commissioners. This record shall contain:

1. the date of the vote;
2. the name of the commissioners available for vote;
3. the method of communication used to contact each commissioner including any contact information;
4. the affirmative or negative vote of each commissioner.

E. If the director cannot contact enough commissioners to constitute a quorum, he may act on behalf of the commission during the declared emergency or disaster. Once the commission is able to meet, it shall review all exemptions granted by the director during the declared emergency or disaster. The commission may ratify any actions taken on behalf of the commission by the director.

F. The emergency powers of the director under this Section shall expire upon either of the following:

1. a majority vote of the commission;
2. the expiration of the declaration of emergency or disaster by the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 36:2571 (November 2010), amended LR 38:1272 (May 2012).

Chapter 15. Sale, Storage, Transportation and Handling of Anhydrous Ammonia

NOTE: This Chapter applies specifically to the sale, storage, handling, and transportation of anhydrous ammonia over Louisiana highways and the sale, construction and use of anhydrous ammonia containers and equipment.

Subchapter A. New Dealers

§1501. Prerequisite

A. As a prerequisite to engage in the anhydrous ammonia business in the state of Louisiana, an applicant shall first comply with the applicable rules and regulations of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:898 (July 1993), LR 38:1272 (May 2012).

§1503. Definitions

Mobile Air Conditioning System—mechanized vapor compression equipment which is used to cool the driver's or passenger's compartment of any motor vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:898 (July 1993), LR 38:1272 (May 2012).

§1505. Applications

A. Any person, firm, or corporation desiring to enter the anhydrous ammonia business in the state of Louisiana shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified. The applicant's supplier is prohibited from being the authorized representative. Only with special approval of the commission, under extenuating circumstances, shall the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) shall be furnished by the commission upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:898 (July 1993), LR 33:1143 (June 2007), effective July 1, 2007, amended LR 38:1272 (May 2012).

§1507. Requirements

A. Before any permit may be issued from the office of the director, all applicants shall have complied with the following.

1. Shall deposit filing fee of \$100 for Class A1; \$50 for Class A3; and \$25 for all others. This fee shall accompany application.

2. Formal application for a permit shall be submitted to the office of the director.

3. Shall have on file in the office of the director proof of insurance, issued by a Louisiana licensed agent, in the minimum sum of \$1,000,000, in the classes of insurance as required by the commission. This proof of insurance may be a copy of the policy with an endorsement that the insurance company will give at least 10 days notice to the commission before cancellation, or on a commission proprietary certificate of insurance, showing kinds and amount in force, with certificate bearing the clause that in the event the insurance company intends to cancel, the insurance company will notify the director of the commission 10 days prior to the date of cancellation, or a binder of insurance coverage, within date, will be acceptable as proof of insurance until the policy or proprietary certificate of insurance can be issued. The commission shall provide the proprietary certificate of insurance form on its public web site for downloading or will provide copies of the proprietary certificate of insurance form via facsimile or via U.S. mail upon request.

4. Where applicable, storage tank and location shall be approved. Storage tanks shall not be located inside corporate limits without written permission of the governing body.

a. All sketches or drawings of proposed bottle filling plants, liquid withdrawal systems and/or installations utilizing ASME containers shall be submitted to the office of the director and approved before system is put into operation.

5. Where applicable, applicant shall provide adequate transport and/or delivery trucks satisfactory to the commission. Each transport and/or delivery truck used in Louisiana shall be registered in Louisiana and shall be inspected annually by the commission or other qualified agency acceptable to the commission, however any transport and/or delivery truck registered and not being used in Louisiana shall either have the inspection required of those used in Louisiana or apply for a waiver of the inspection, in writing, prior to its inspection due by date. Transports and/or delivery trucks granted a waiver of inspection shall be inspected prior to their use in Louisiana. Each transport and/or delivery truck registered in Louisiana shall have an annual registration fee of \$50 paid and a valid registration decal affixed to the transport and/or delivery truck.

6. Shall have paid permit fee in the amount of \$300 to the commission of the state of Louisiana. For all succeeding years the permit fee shall be 1/2 of 1 percent of gross annual sales of anhydrous ammonia or \$300, whichever is greater.

7. Persons in charge of operations shall furnish proof satisfactory to the commission and the office of director that they have had experience in and are familiar with and will abide by all safety precautions necessary in the conducting of the business for which they are granted a permit.

8. All service and installation personnel, anhydrous ammonia transfer personnel and tank truck drivers shall have

a card of competency from the office of the director. All permit holders, except Class A-3X permit holders, shall have at least one card of competency issued to their permit. A card of competency will be issued to an applicant upon receipt of a \$20 examination fee and successfully passing the competency test, providing the applicant holds some form of identification acceptable to the commission. The commission may accept as its own a reciprocal state's examination which contains substantially equivalent requirements. This shall be evidenced by a letter from the issuing authority or a copy of a valid card issued by the reciprocal state. All applicable fees shall be paid prior to issuing the card.

a. All cards of competency shall be renewed annually by the permit holder. There will be a charge of \$10 per card for renewals. After expiration, there will be a penalty of \$3 per card. There is a charge of \$10 for replacing a lost card, change of employer, or change of company name. A card with an improper employer or company name shall not be valid.

b. All employees who are qualified by this commission and have been issued certificates of competency shall have their certificates of competency on their person while on duty. Should an employee lose his card, the dealer shall notify the office of the director within 10 days for the issuance of a new card. If an employee terminates his employment with the dealer for whom the card is issued, the card shall be picked up by the dealer and returned to the office of the director immediately.

9. Shall have necessary experience in anhydrous ammonia business or have employed a recognized operator of such experience and competency. The commission reserves the right to demand that such knowledge and competency be proved by a written examination.

10. Where applicable shall provide adequate switch track or tank loading and unloading facilities. All auxiliary equipment such as pumps, hose, electrical switches, etc., shall be, where possible, Underwriters Laboratory or any other nationally recognized testing agency approved for anhydrous ammonia. If equipment is not so approved, drawings and descriptions shall be submitted to the office of the director for his approval before installation.

11. Applicants for change of name shall deposit a filing fee of \$25 with a formal application for a name change. The office of the director shall administratively grant the name change after all commission requirements are met. The commission shall ratify the name change at the next subsequent commission meeting after which a minimum of 20 days have elapsed since the administrative granting of the name change. A representative of the new firm or corporation is required to be present when the application is ratified by the commission. All certificates of competency shall be changed to new name.

12. Any permit holder who does not actively engage in business for which permit was granted, for a period of six consecutive calendar months, may have his permit revoked by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:898 (July 1993), LR 25:2413 (December 1999), amended LR 27:423 (March 2001), repromulgated LR 27:565 (April 2001), amended LR 33:1144 (June 2007), effective July 1, 2007, LR 38:1273 (May 2012).

§1509. Compliance with Rules

A. Compliance with all other applicable rules and regulations is a mandatory requirement for all permit holders.

1. The commission may assess a civil penalty of not less than \$100 nor more than \$1000 for each violation of the rules and regulations adopted by the commission. Civil penalties may be assessed only by a ruling of the commission based on an adjudicatory hearing held in accordance with the Administrative Procedure Act. The commission may institute civil proceedings to enforce its ruling in the district court for the parish in which the commission is domiciled or the district court for the parish in which the violation occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:899 (July 1993), LR 25:2413 (December 1999), amended LR 38:1274 (May 2012).

§1511. Re-Application

A. Any person, firm or corporation who has made application for a permit to enter the anhydrous ammonia business and whose request for permit has been denied, may re-submit an application 90 days after date of denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:899 (July 1993), LR 38:1274 (May 2012).

§1513. Classes of Permits

A. The commission shall issue upon application the following classes of permits.

1. Class A1. Holders of these permits may enter any phase of the anhydrous ammonia business.

a. Shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified. The applicant's supplier is prohibited from being the

authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) shall be furnished by the commission upon request.

b. Shall deposit filing fee of \$100 with application.

c. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 covering:

- i. products;
- ii. manufacturers and contractors; and
- iii. automobile liability.

d. Storage tank and location shall be approved. Storage tanks shall not be located inside corporate limits without permission of the governing body.

e. Shall pay permit for first year's operations in the amount of \$300 to the commission. For all succeeding years the permit fee shall be one-half of 1 percent of the gross annual sales of anhydrous ammonia or \$300, whichever is greater.

f. Person in charge of operations shall be satisfactory to the commission and the office of director.

g. All service and installation personnel, anhydrous ammonia transfer personnel, and tank truck drivers shall have a card of competency from the office of the director.

h. Shall have necessary experience in anhydrous ammonia business or have employed a recognized operator of such experience and competency. The commission reserves the right to demand that such knowledge and competency be proved by a written examination.

i. Shall provide adequate switch track of tank loading and unloading facilities. All auxiliary equipment such as pumps, hose, electrical switches, etc., shall be, where possible, Underwriters Laboratories or any other nationally recognized testing agency approved for anhydrous ammonia. If equipment is not so approved, drawings and descriptions shall be submitted to the office of the director for his approval before installation.

j. No truck shall be parked on a street or highway at night in any city, town or village, except that it be for the purpose of serving a customer, then only in an emergency.

k. Compliance with all other applicable rules and regulations is a mandatory requirement.

1. The name of the dealer or permit holder shall appear on all tank trucks, storage tank sites, and/or advertising being used by the dealer.

2.a. Shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified. In no case will the applicant's supplier be the authorized representative. Only with special approval of the

commission, under extenuating circumstances, will the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) shall be furnished by the commission upon request

b. Shall deposit filing fee of \$25 with application.

c. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 covering products, manufacturers and contractors, and automobile liability.

d. Shall pay permit for first year's operations in the amount of \$300 to the commission. For succeeding years the permit fee shall be \$300.

e. Person in charge of operations shall be satisfactory to the commission and the office of the director.

f. All service and installation personnel shall have a certificate of competency from the office of the director.

g. Shall have necessary experience in anhydrous ammonia business or have employed a recognized operator of such experience and competency. The commission reserves the right to demand that such knowledge and competency be proved by a written examination.

h. Compliance with anhydrous ammonia law and all other applicable rules and regulations is a mandatory requirement.

3. Class A3. Holders of these permits may engage in the filling of approved cylinders with anhydrous ammonia on their premises, but shall not deliver anhydrous ammonia.

a. Shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified. The applicant's supplier is prohibited from being the authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) shall be furnished by the commission upon request.

b. Shall deposit filing fee of \$25 with application.

c. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 covering products liability.

d. Storage tank and location shall be approved by the commission's authority having jurisdiction. All tanks located in corporate limits shall also be approved by the governing body.

e. Shall pay permit for first year's operations in the amount of \$300 to the commission. For all succeeding years the permit fee shall be 1/2 of 1 percent of the gross annual sales of anhydrous ammonia or \$300, whichever is greater.

f. Person in charge of operations shall be satisfactory to the commission and the office of the director.

g. All employees handling anhydrous ammonia shall have a certificate of competency from the office of the director.

h. Shall have necessary experience in anhydrous ammonia business or have employed a recognized operator of such experience and competency. The commission reserves the right to demand that such knowledge and competency be proved by a written examination.

i. Compliance with all other applicable rules and regulations is a mandatory requirement.

j. The dealer's name shall appear on all stationary storage tank sites.

4. Class A3-X. Holders of these permits may engage in the exchange of approved anhydrous ammonia cylinders on their premises, but shall not fill cylinders.

a. Shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is not required at the commission meeting when the application for a permit is ratified. The formal application form(s) shall be furnished by the commission upon request.

b. Shall deposit filing fee of \$50 with application.

c. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 covering products and automobile liability.

d. Shall pay permit for first year's operations in the amount of \$300 to the commission. For all succeeding years, the permit fee shall be 1/2 of 1 percent of the gross annual sales of anhydrous ammonia or \$300, whichever is greater.

e. Storage location shall be approved by the commission's authority having jurisdiction. All tanks located in corporate limits shall also be approved by the governing body.

f. Cylinder delivery trucks shall comply with CFR 49 of the DOT specifications.

g. Person in charge of operations shall be satisfactory to the commission and the office of the director.

h. All employees handling anhydrous ammonia shall have a certificate of competency from the office of the director.

i. Compliance with all other applicable rules and regulations is a mandatory requirement.

5. Class A4. Holders of these permits may transport anhydrous ammonia by motor vehicle over the highways of the state of Louisiana but shall not sell product in the state. This permit may be secured from the office of the director upon receipt of the following:

a. Shall file formal application for a permit with the commission. These applications for permits shall be administratively granted by the office of the director, upon complying with all commission requirements, such as payment of the applicable fees, qualification of personnel, providing proof of insurance and if applicable, final approval

of a sketch, registration and safety inspection of tanker trucks. The commission shall ratify the permits at the first subsequent commission meeting after at least 20 days have elapsed after the permit has been administratively granted by the office of the director. Presence of applicant for the permit or his authorized representative is required at the commission meeting when the application for a permit is ratified. The applicant's supplier is prohibited from also being the authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant for a permit to be represented by another party other than a principal officer, director, manager, or attorney. The formal application form(s) shall be furnished by the commission upon request.

- b. Shall deposit filing fee of \$25 with application.
- c. Shall pay permit fee for first year's operations in the amount of \$300 to the commission of the state of Louisiana. For all succeeding years the permit fee shall be \$300.
- d. Holders of these permits shall furnish evidence of general liability insurance in the minimum sum of \$1,000,000 automobile liability.
- e. All trucks traveling in Louisiana shall conform to CFR 49 of the DOT specifications.
- f. All transport trucks are subject to inspection and approval of the commission.
- g. No truck shall be parked on a street or highway at night in any city, town, or village, except that it be for the purpose of serving a customer and this only in an emergency.
- h. All transport and tank truck drivers shall have a certificate of competency from the office of the director.
- i. Compliance with all other applicable rules and regulations is a mandatory requirement.
- j. The dealer's name shall appear on all tank trucks which require registration with the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:899 (July 1993), LR 25:2413 (December 1999), amended LR 27:423 (March 2001), repromulgated LR 27:565 (April 2001), LR 33:1144 (June 2007), effective July 1, 2007, LR 38:1274 (May 2012).

Subchapter B. Dealers

§1515. Compliance with Rules and Act

A. Dealers shall comply with R.S. 3:1355 and the rules and regulations of the commission in order to obtain a permit and to avoid cancellation of said permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:901 (July 1993), LR 38:1276 (May 2012).

§1517. Fine

A. After 15 days notice to appear before the commission for purposes of a trial and said trial is held, the commission may impose a fine in lieu of cancellation of permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), amended LR 38:1276 (May 2012).

§1519. Expiration of Permit

A. All permits or registrations shall expire at midnight on the date of their expiration.

B. All permits or registrations renewed after their expiration date shall have an administrative penalty of 5 percent of the permit or registration fee due added for each month or fraction thereof, not to exceed 25 percent of the amount of the permit or registration fee due.

C. All permits or registrations renewed after their expiration date shall have administrative interest of 1 percent of the permit or registration fee due added for each month or fraction thereof to the amount of the permit or registration fee due.

D. After the expiration of a permit or registration fee renewal date, by five days, any dealer continuing in operation without the payment of the fee, any administrative penalty, and any administrative interest due, shall be considered as operating in violation of R.S. 3:1356(A) and the rules and regulations of the commission. The commission may assess a civil penalty in accordance with R.S. 3:1357 or may suspend, cancel or revoke said permit or registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 27:423 (March 2001), LR 38:1276 (May 2012).

§1521. Qualified Personnel

A. All service and installation personnel, anhydrous ammonia transfer personnel, and tank truck drivers shall have a card of competency from the office of the director. Where new persons are employed, they shall not be placed in charge of making installations, servicing equipment, or delivering anhydrous ammonia until they have passed the examination given by the director and a card showing their competency has been issued to them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 38:1276 (May 2012).

§1523. Report Accidents

A. Any accident involving anhydrous ammonia or the transportation of anhydrous ammonia which causes injury to employees, property damage, injury to other persons, a fire or an accidental release of anhydrous ammonia that is reportable under the Louisiana Right-To-Know Law shall be reported by that dealer in writing to the office of the director as soon as possible but not later than 48 hours. The office of the director shall accept, in lieu of the required report in writing, data and information from the information system established under the Hazardous Materials Information Development, Preparedness and Response Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 25:2414 (December 1999), LR 38:1277 (May 2012).

§1525. Insurance

A. Insurance requirements for an individual firm or corporation having a permit shall be the same as required of a new dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 38:1277 (May 2012).

§1527. Compliance with Rules

A. Compliance with all other applicable rules and regulations is a mandatory requirement for all permit holders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), amended LR 38:1277 (May 2012).

§1529. Condemnation of Tanks

A. Any anhydrous ammonia storage container corroded, pitted or worn to 20 percent of the thickness of the head, shell plate, or stand pipe shall be condemned for further storage of anhydrous ammonia, provided the shell thickness is not less than 3/16 inch.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 38:1277 (May 2012).

§1531. Improper Installation

A. A dealer shall not serve any anhydrous ammonia system which the dealer knows is not installed pursuant to the commission regulations or is in a dangerous condition. All new installations or reinstallations shall be checked by the dealer for tightness of lines, poor workmanship, use of unapproved pipe or equipment or use of poor piping design. All improper installations shall be corrected before the dealer services such installation or reinstallation with anhydrous ammonia for the first time. Any subsequent servicing dealer shall not be responsible for unauthorized changes in or failures of an existing system or connected equipment.

1. Anyone violating this Section shall also be liable for all damages resulting from an accident or explosion involving that shipment. The liability imposed by this Section shall not be delegated by contract or practice to any transporter or subcontractor responsible for the transportation of anhydrous ammonia.

2. A permit may be suspended or revoked by the commission whenever the commission has assessed two or more penalties against a dealer for willful violation of or failure to comply with such rules and regulations provided the second or succeeding penalty or penalties have been imposed for violations of or failure to comply with the regulations of the commission committed after the imposition of the first penalty or forfeiture, reserving to the dealer the right to resort to the courts for reinstatement of the permit suspended or revoked. The commission may suspend or revoke the permit of any person who violates the provisions of R.S. 3:1355 or who fails to pay any civil penalty imposed by the commission under the provisions of R.S. 3:1357 within 30 days after the assessment becomes final. Any dealer who continues to operate after such permit is revoked or during the period of such suspension shall be liable to prosecution under the provisions hereof in the same manner as if no such permit had ever been issued. A permit may be revoked or suspended only by a ruling of the commission based on adjudicatory hearing held in accordance with the Administrative Procedure Act. The commission may institute civil proceedings to enforce its rulings in the district court for the parish in which the commission is domiciled or in the district court for the parish in which the violation occurred.

3. No dealer shall service an anhydrous ammonia system, tank or another dealer after having received notification by the commission that the system, tank or dealer is not in compliance with these rules and regulations. An AD letter posted on the commission's public website which states that a system, tank or dealer is not in compliance shall constitute notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), LR 27:423 (March 2001), LR 38:1277 (May 2012).

§1533. Customer Notification

A. Each dealer shall transmit a notice once each year to each customer stating that anhydrous ammonia systems are potentially dangerous, that a leak in the system could result in an injury and that systems should be inspected periodically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 38:1278 (May 2012).

§1535. Inspections

A. Each dealer facility subject to the regulations of the commission shall submit to an inspection by a representative of the commission, which inspections may be conducted without prior notice by the commission or its representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 38:1278 (May 2012).

§1537. Dealer Permit Requirements

A. Permits required under these general requirements shall not be transferred. All dealers, regardless of operation, shall hold a permit and shall not operate under a permit of another dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 38:1278 (May 2012).

§1539. Testing of Tanks

A. The director of commission reserves the right to require an internal hydrostatic pressure test on bulk storage or nurse tanks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 38:1278 (May 2012).

§1541. Sketches

A. A copy of all anhydrous ammonia installation plans and specifications including plot plans shall be submitted to the office of the director for approval prior to the commencement of work on the installation.

B. Such plans shall show the following:

1. the distance of container from line of adjoining property, highways, main line of railroads, places of public assembly, institutional occupancy (such as hospitals, nursing homes, schools) and dug wells;

2. size and location of tank;

3. the size and location of all pipe and the length of all runs;

4. all other details as related to the proposed installation as required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 38:1278 (May 2012).

§1543. Inspections and Transport/Delivery Truck Registration Decals

A. Dealers shall inspect their customer's nurse tanks up to 3,000 gallons annually. A report showing proof of inspection shall be mailed to the office of the director by the twentieth of the month following inspection.

1. The above inspection shall be good for one year only.

B. Any bulk storage container (over 3,000 gallons) shall be inspected and tagged by an inspector of the commission on an annual basis.

1. The above inspection shall be good for one year only.

C. Any system being serviced for the first time shall be inspected in accordance with the provisions of Subsection A and B above, whichever may apply.

D. Dealers who operate transport and/or delivery trucks in the state of Louisiana shall file Form DPSP 8045 (R/97) with the office of the director between the dates of February 1 and April 30 each year to register and pay the required registration fees on all transport and/or delivery trucks used in Louisiana. New equipment and equipment being used for the first time in Louisiana and not registered during the registration period shall be registered and inspected before operating over the highways of the state. Upon payment of the required fee, a registration decal will be issued on Form 8044 (R/97) by the office of the director or a registration decal by a commission inspector to be displayed on the registered equipment. It shall be a violation of the commission rules to operate a transport and/or delivery truck over the highways of the state without the registration decal affixed.

E. Safety inspections are required on all transport and/or delivery trucks requiring registration. The required safety inspection shall be performed on all transport and/or delivery trucks registered on Form 8045 (R/97) and used in Louisiana, within a three month period prior to or a three month period subsequent to their registration. Safety inspections on transport and/or delivery trucks registered on Form 8045 (R/97) and not being used currently in Louisiana shall either be inspected the same as those being used or apply for a waiver of the inspection, in writing, prior to its

inspection due by date. Transport and/or delivery trucks granted a waiver of inspection shall be inspected prior to their use in Louisiana. Safety inspections shall be performed by a commission inspector or a qualified agency acceptable to the commission with acceptable documentation that a safety inspection has been performed by that qualified agency. Safety inspections by an inspector of the commission shall be free of charge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 25:2414 (December 1999), LR 38:1278 (May 2012).

Subchapter C. Forms and Reports

§1545. Installation Report

A. An installation report form shall be used for all installations and reinstallations of DOT and ASME containers and shall be retained in dealer's file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 38:1279 (May 2012).

Subchapter D. Adoption of Standard

§1547. National Standard

A. The commission hereby adopts the American National Standards Institute, Safety Requirements for the Storage and Handling of Anhydrous Ammonia, CGA-G-2.1, ANSI K61.1 of 1989 except for Section 8 regarding systems mounted on railcar structures.

B. The commission may adopt subsequent editions of these standards by a rule change in accordance with the Administrative Procedure Act.

C. Any published rules and regulations shall take precedence over the standard referenced in Subsection A.

D. The commission reserves the right to make exceptions to any rule adopted in §1547.A as it applies to local conditions as it may deem necessary in the interest of public safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354. Effective August 15, 2010, Act 579 of the 2010 Regular Session repeal R.S. 3:1354 and enacted R.S. 40:1911 et seq., and particularly R.S. 40:1914 as authority for anhydrous ammonia regulations.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 19:903 (July 1993), LR 29:2511 (November 2003), LR 38:1279 (May 2012).

John W. Alario
Executive Director

1205#023

RULE

Department of Public Safety and Corrections Office of State Police

Issuance of Concealed Handgun Permits (LAC 55:I.Chapter 13)

Under the authority of R.S. 40:1379.3(A)(1), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of State Police amends the concealed handgun permit regulations, LAC 55:I.Chapter 13. The amendments to the Rule are necessary to be in compliance with recent Acts passed by the Louisiana Legislature. In addition, the Rule makes technical changes to improve readability, eliminate duplicate items, and to codify current practice by the department regarding utilization of its statutory authority to levy fines under certain circumstances.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 13. Issuance of Concealed Handgun Permits

§1301. Applications and Permits

A. The rules contained herein are promulgated by the Concealed Handgun Permit Unit of the Department of Public Safety and Corrections, Office of State Police, in order to set forth the policies and procedures applicable to the issuance of concealed handgun permits to Louisiana citizens who qualify for such permits pursuant to R.S. 40:1379.1 and 40:1379.3; to provide statewide uniform standards for issuing permits to carry concealed handguns; and to maintain the health, welfare, and safety of the public. These considerations shall control the application and interpretation of these rules. Any subsequent restatement, repeal, or amendment of these rules shall be in accordance with the aforementioned considerations.

B. **Applicability.** The policies and procedures provided herein shall be applicable to all Louisiana citizens who are eligible for a statewide concealed handgun permit.

C. **Duties and Responsibilities.** Persons issued concealed handgun permits have the authority only to carry a concealed weapon and are regarded as private citizens in all matters of law with no special powers or authority accruing by virtue of the concealed handgun permit.

D. - E. ...

F. **Suspension/Revocation.** The superintendent of state police or his designee may suspend or revoke concealed handgun permits when conditions and/or circumstances are such that the holder of such permit can no longer show need or when the holder commits acts contrary to law or uses the permit for self aggrandizement or in an unreasonable and imprudent manner.

G. **Arrest Record.** If the applicant has an arrest record, he shall present a notarized statement from the clerk of court or district attorney of the parish in which the arrests were made which specifies the disposition on all charges.

H. - I.6. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379.1, 40:1379.3, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 1:495 (November 1975), amended by the Department of Public Safety and Corrections, Office of State Police, LR 22:845 (September 1996), LR 38:1279 (May 2012).

§1303. Issuance of Special Officer's Commission

A. Purpose. The purpose of this regulation is to set forth the policies and procedures applicable to the issuance of special officer's commission to persons showing need for such commissions as required in accordance with the provisions of Title 40, section 1379.1 of the Louisiana Revised Statutes.

B. Applicability. The policies and procedures provided herein shall be applicable to all officers, agents, and employees of agencies, boards and commissions of the state of Louisiana; of local government subdivisions; of private institutions or others who display a need for statewide police power and power to arrest, are bonded and meet other restrictions as required.

C. Duties and Responsibilities. Authorized persons commissioned as special officers shall have the direct authority to perform those activities specified on the special officer's commission card. However, when the holder of a special officer's commission is not performing those tasks specified on the commission card, he shall be regarded as a private citizen and his commission shall not be in effect.

D. Application. The superintendent of state police shall be authorized to issue, at his discretion, a special officer's commission from the Office of State Police. All requirements of the superintendent of state police relating to application shall be satisfied. Applications shall be submitted in the manner prescribed by the superintendent of state police and will include the submission of such documents and materials establishing eligibility as the superintendent may deem necessary.

E. Suspension/Revocation. The superintendent of state police may revoke or suspend special officer's commission when conditions and/or circumstances are such that the holder of a special commission can no longer show need or when the holder commits acts contrary to law or to the jurisdictional stipulations of the commission or through his action(s) or lack of action(s) brings discredit upon the state of Louisiana, its departments, agencies or commissions or its political subdivisions. Persons holding special officer's commissions are subject to the same statutory responsibilities and liabilities as are all other local and state law enforcement officers.

F. Termination. Special officer commissions will automatically expire one year from the date of issue or as otherwise provided by law.

G. Qualifications and Requirements. The following requirements shall be met before a special officer's commission will be issued. All applicants:

1. shall submit a letter which details the need for statewide police power and the power to arrest. If the applicant is employed and the nature of the employment is the basis for need of a special officer's commission, then, in addition to his letter, a detailed letter from the employer stating the need is necessary;

2. shall complete a detailed application and submit application along with the following documents:

a. complete fingerprint file which has been prepared by a law enforcement agency;

b. copy of birth certificate;

c. two color photos 2" by 2"—two side views and two front views;

3. shall have completed the minimum hours of basic law enforcement training in accordance with the Council on Peace Officer Standards and Training, or possess related experience or ability equal to such training;

4. submit to and pass a comprehensive background investigation, said investigation to be conducted by the Louisiana State Police;

5. show proof of faithful service bond in the minimum amount of \$10,000; and

6. if the applicant has an arrest record, he shall present a notarized statement from the clerk of court or the district attorney of the parish in which the arrests were made which specifies the disposition on all charges.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379.1, 40:1379.3, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 1:496 (November 1975), amended by the Department of Public Safety and Corrections, Office of State Police, LR 22:845 (September 1996), LR 38:1280 (May 2012).

§1305. Definitions

A. For the purposes of these rules, the following words and phrases shall be defined as:

Addiction—the habitual use of alcoholic beverages or any controlled dangerous substance as defined in R.S. 40:961 and 40:964.

Applicant—a person who has completed and submitted an application to the department seeking a concealed handgun permit.

Application—the forms and schedules prescribed by the department upon which an applicant seeks a permit or the renewal thereof. Application also includes information, disclosure statements, releases, certificates or any other form required by the department in the application process.

Citizen—any person legally residing in Louisiana immediately preceding the filing of an application for a concealed handgun permit.

Concealed Handgun—any handgun as defined in R.S. 40:1379.3(J)(1), which is carried on a person in such a manner as to hide or obscure the handgun from plain view.

Department—Louisiana Department of Public Safety and Corrections, Office of State Police.

Deputy Secretary—the deputy secretary of the Louisiana Department of Public Safety and Corrections who serves as the superintendent of the Office of State Police.

Fugitive from Justice—a person who flees, evades, or escapes from any jurisdiction to avoid arrest, prosecution, or imprisonment for any criminal offense, which shall include outstanding traffic attachments or warrants, or to avoid giving testimony in any criminal proceeding.

Illegal Alien—any person without legal authority to enter or remain in the United States and who is not legally residing within the United States or any territory or possession of the United States.

Law Enforcement Officer—any individual who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest. For the purposes of this Section,

this definition shall apply to the term "peace officer" and "police officer."

Machine Gun—any firearm which shoots or is designed to shoot more than one round without reloading and by a single function of the trigger.

N.R.A.—National Rifle Association.

Permit—the authorization issued by the deputy secretary of the Louisiana Department of Public Safety and Corrections pursuant to R.S. 40:1379.3 and these rules, which shall be valid for five years from the date of issuance unless revoked, suspended, or otherwise invalidated, and shall contain a permit number, date of expiration, and the name, address, date of birth, physical description, and photograph of the permittee.

Permittee—an individual who meets the qualifications as described in R.S. 40:1379.3 and these rules and to whom a concealed handgun permit has been issued.

Pistol—a handgun that has a short barrel and can be held, aimed, and fired with one hand and is capable of only firing a single round each time the trigger is pulled, which includes semi-automatic handguns.

P.O.S.T.—Council on Peace Officer Standards and Training.

Resident—a person who is legally domiciled in Louisiana.

Revolver—a pistol that has a rotating cylinder containing a number of firing chambers. The action of the trigger or hammer will line up a chamber with the barrel and firing pin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379.1, 40:1379.3, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:846 (September 1996), amended LR 28:1483 (June 2002), LR 38:1280 (May 2012).

§1307. Applications and Permits

A. Application materials may be obtained submitting a completed "Request for Application To Carry A Concealed Handgun" (form DPSSP 4644) to the department or by accessing the Louisiana State Police website at www.lsp.org.

B. Initial Applications

1. All applications for a permit shall be submitted on forms provided by the department and mailed to:

Louisiana State Police
Concealed Handgun Permit Unit
P. O. Box 66375
Baton Rouge, LA 70896

2. Applicants shall provide all additional information requested by the department within 10 business days of receipt of the request, unless an extension is granted by the department. If any applicant fails to provide all additional information requested by the department, the application shall be considered incomplete and shall be denied.

3. All applicants shall submit with their application two color passport photographs that meet the following specifications:

- a. photographs taken within 60 days of submission of application;
- b. full frontal view photograph of the applicant including his head and hair;
- c. sunglasses, hats, or caps may not be worn while taking photograph; and

d. the rear of the photograph shall be signed and dated by the employee of the law enforcement agency where the applicant's fingerprints are taken.

4. All applicants shall submit with their application two complete, legible, and classifiable FBI applicant fingerprint cards taken by a person employed by a law enforcement agency who is appropriately trained in recording fingerprints.

5.a. For purpose of proof that the applicant is a resident of the state of Louisiana prior to his application for a permit, the applicant shall submit with his application a photocopy of his valid Louisiana driver's license or valid Louisiana identification card.

i. An applicant shall have a Louisiana driver's license or identification card.

ii. In the event the applicant's Louisiana driver's license or Louisiana identification card has been issued within six months of application, proof of residency shall be established by any one of the following documents:

- (a). United States passport;
- (b). Louisiana voter registration card;
- (c). any other documentation, which may adequately satisfy proof of compliance with the qualifications for residency.

b. For purposes of proof of residency, a business address or post office box shall not suffice.

c. Applicants who claim Louisiana as their domiciliary state and are on U.S. military duty in another state shall submit a copy of their orders detailing them to such duty station, along with a copy of their military identification card. Applicants who do not claim Louisiana as their domiciliary state and are on U.S. military duty in this state shall submit a copy of their orders detailing them on permanent status to a duty station within this state. In addition, those applicants shall possess either a valid Louisiana driver's license or valid Louisiana identification card.

d. An applicant who is attending school in another state shall submit a copy of his school registration form and fee bill for each semester during the permit period that is applicable.

6. For purposes of proof that the applicant is at least 21 years of age, a photocopy of his valid Louisiana driver's license or valid Louisiana identification card which contains the applicant's date of birth shall suffice.

7. All application forms are to contain a properly notarized oath wherein the applicant swears that:

- a. the information contained therein is true and correct;
- b. the applicant has read the applicable law and these rules, and any other informational materials supplied by the department that pertain to concealed handgun permits;
- c. the applicant agrees to comply with these rules and the law; and

d. the applicant understands that any omission or falsification of any information required in the application may subject the applicant to criminal penalties.

8. All applications shall contain the permittee's home and daytime telephone number and a permanent mailing address for receipt of correspondence and service of documents by the department.

9. All applications submitted to the department shall contain proof of competency with a handgun in accordance with §1311.

10. All applications shall include a properly executed affidavit, provided by the department, whereby the applicant agrees in writing to hold harmless and indemnify the department, the state or any peace officer for any and all liability arising out of the issuance or use of the concealed handgun permit.

11. Incomplete applications, including failure to pay fees, shall result in the rejection or denial of a permit application.

12. The applicant or permittee shall notify the department, in writing, of any change of address, name, phone number, or other information required in the application, including the effective date of the change, within 30 days of the effective date of the change. All notifications shall be submitted to the Concealed Handgun Permit Unit via certified mail, return receipt requested or via the unit's public website.

13. Any false statement or improper notarization contained in any report, disclosure, application, permit form, or any other document required by the department shall be a violation of these rules and may be cause for denial, suspension, or revocation of the permit.

14. All applications shall be submitted with a certified check, money order or any other means of payment as approved by the department for the application or renewal fee as provided in §1307.B.15. An application is not complete unless it is submitted with the appropriate fee, is signed by the applicant, and contains all information required by the department.

15. All applicants shall submit with the application a non-refundable fee in the form of a certified check, money order or any other means of payment as approved by the department. The applicable fees are as follows:

a. for a five-year concealed handgun permit the fee shall be \$125;

b. the above fees shall be reduced by one-half if the applicant is 65 years of age or older on the date the application is received by the department;

c. any applicant who has not continuously resided within the state of Louisiana for the 15 years preceding the submission of the initial application shall enclose an additional non-refundable \$50 fee. This additional fee shall not be reduced for applicants 65 years of age or older.

d. Repealed.

C. Qualifications to Receive a Permit. To qualify for a concealed handgun permit, a citizen shall:

1. not be ineligible to possess a firearm under 18 U.S.C. 922(g); and

2. meet the requirements set forth in R.S. 40:1379.3 et seq.

D. Renewal of Permits

1. To renew a concealed handgun permit, a permittee shall file a renewal application no more than 120 days prior to the expiration of the permit and no later than the sixtieth day after expiration. Renewal applications submitted after the sixtieth day from expiration will not be accepted and the permittee shall complete a new original application with all documentation required for an original application. All

renewal applications shall include two new photographs of the applicant as specified in LAC 55:I.1307.B.3.

2.a. A renewal application shall be considered filed with the department when the department receives the application and the fees are processed. The applicable renewal fees are as follows:

i. for a five-year concealed handgun permit the fee shall be \$125;

ii. the above fees shall be reduced by one-half if the applicant is 65 years of age or older on the date the application is received by the department.

b. If necessary to show proof of eligibility, an applicant who has not resided in Louisiana for the last 15 years may be required to pay an additional \$50 non-refundable fee to defray the cost of the background check.

3. An incomplete renewal application shall be denied or rejected by the department for failure to provide requested documents or appropriate fees. Proof of residency shall conform to LAC 55:I.1307.B.5.a.

4. Each permittee applying for a renewal of his permit shall complete additional educational training pursuant to requirements of §1311 within one year prior to submitting a renewal application and submit proof of training with the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379.1, 40:1379.3, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:848 (September 1996), amended LR 38:1281 (May 2012).

§1309. Permits

A. In accordance with R.S. 40:1379.3 and LAC 55:I:1301 et seq., a concealed handgun permit shall be issued as a prerequisite to carry a concealed handgun.

B. A permit shall grant statewide authority to a permittee to carry and conceal on his person, in the manner prescribed by law and these rules, a handgun as defined by R.S. 40:1379.3(J)(1). A permit shall grant a permittee only the authority to carry a concealed handgun as a private citizen and grants no special authority to any citizen issued the permit.

C. - D. ...

E. Any permit issued pursuant hereto shall automatically become invalid for any of the following reasons:

1. the permit is altered in any manner;

2. the permit is lost or stolen;

3. the permittee is carrying it while under the influence of alcoholic beverages or a controlled dangerous substance; or

4. the permittee ceases to reside within this state.

F. Any permit issued by the deputy secretary of the Department of Public Safety and Corrections shall be deemed to be the property of the department and shall be surrendered and returned to the department upon suspension, revocation or expiration, or when the permittee ceases to reside in the state.

G. The following shall be mandatory grounds for revocation of a permit by the deputy secretary:

1. The permittee fails to satisfy or maintain any one of the qualification requirements enumerated in the law or these rules.

2. The permittee violates the provisions of R.S. 40:1379.3(I) or R.S. 40:1382.

H. An otherwise lawful permit shall be considered automatically suspended and not valid while the permittee is under the influence of alcoholic beverages or a controlled dangerous substance. For purposes of these rules and the applicable law, a permittee shall be considered under the influence as evidenced by a blood alcohol reading of 0.05 grams percent or greater by weight of alcohol in the blood, or when a blood test or urine test shows any confirmed presence of a controlled dangerous substance as defined in R.S. 40:961 and 964.

I. The deputy secretary shall automatically suspend a permit for six months if a permittee fails to comply with the provisions of R.S. 40:1379.3(I)(2).

J. - L. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379.1, 40:1379.3, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:848 (September 1996), amended LR 38:1282 (May 2012).

§1311. Handgun Training Requirements

A. Upon initial application to the department for a permit, all applicants shall demonstrate competence with a handgun by any one of the following:

1. completion of any Department of Public Safety and Corrections approved firearms safety or training course which shall include at least a minimum of nine hours of instruction as detailed below:

a. one hour of instruction on handgun nomenclature and safe handling procedures of a revolver and semi-automatic pistol;

b. one hour of instruction on ammunition knowledge and fundamentals of pistol shooting;

c. one hour of instruction on handgun shooting positions;

d. three hours of instruction on the use of deadly force and conflict resolution which shall include a review of R.S. 14:18 through 14:22 and which may include a review of any other laws relating to the use of deadly force;

e. one hour of instruction on child access prevention; and

f. two hours of actual live range fire and proper handgun cleaning procedures:

i. live range fire shall include at a minimum 12 rounds each at 6 feet, 10 feet and 15 feet for a total of 36 rounds;

ii. each applicant or permittee shall perform at least one safe reload of the handgun at each distance;

iii. each applicant or permittee shall score 100 percent hits within the silhouette portion of an N.R.A. B-27 type silhouette target with at least 36 rounds;

2. completion of the N.R.A. Personal Protection In The Home Course or Personal Protection Outside the Home Course including instruction in child access prevention conducted by an N.R.A. certified instructor;

3. completion of the N.R.A. Basic Pistol Shooting course including instruction in child access prevention conducted by a N.R.A. certified instructor;

4. possession of a current valid license or permit to carry a concealed handgun issued by a parish law enforcement officer;

5. completion of a law enforcement training academy program certified by P.O.S.T.; or

6. proof of completion of small arms training while serving with the armed forces of The United States of America as described in R.S. 40:1379.3(D)(1) dated within 60 months of date of the application;

7. for personnel on active duty or serving in one of the National Guard or reserve components of the armed forces, possession of a certification of completion of basic training with service record evidence of having successfully completed small arms training and qualification;

8. for personnel released or retired from active duty or the National Guard or reserve components of the armed forces for more than 60 months, possession of proof indicating combat service and an "honorable discharge" or "general discharge under honorable conditions" as evidenced by a Department of Defense Form 214 (DD-214) and completion of the following.

a. A three-hour course of instruction on the use of deadly force and conflict resolution which shall include a review of R.S. 14:18-22 and which may include a review of any other laws relating to the use of deadly force within the preceding 60 months.

b. A one-hour course of instruction on child access prevention within the preceding 60 months.

B. Upon renewal application to the concealed handgun permit unit for a permit, all applicants shall demonstrate competence with a handgun by attending a course taught by a department approved instructor consisting of the following:

1. instruction on handgun nomenclature and safe handling procedures for a revolver and a semi-automatic pistol;

2. instruction on ammunition knowledge and fundamentals of pistol shooting;

3. instruction on handgun shooting positions;

4. instruction on the use of deadly force and conflict resolution which shall include a review of R.S. 14:18-14:22 and which may include a review of any other laws relating to use of deadly force;

5. instruction on child access prevention; and

6. actual live range fire and proper handgun cleaning procedures:

a. live range fire shall include at a minimum 12 rounds each at 6 feet, 10 feet and 15 feet for a total of 36 rounds;

b. each applicant or permittee shall perform at least one safe reload of the handgun at each distance;

c. each applicant or permittee shall score 100 percent hits within the silhouette portion of an N.R.A. B-27 type silhouette target with at least 36 rounds.

C. No certification or completion from any firearms training course or class available to the public offered by a law enforcement agency, college, or private or public institution or organization or firearm training school shall be accepted unless said course received prior approval from the department in accordance with R.S. 40:1379.3(D)(1)(b), (c), and (e).

1. The provider of any course offered for the purpose of certification to obtain a concealed handgun permit shall submit a detailed course syllabus and any course materials to the department in order for the department to evaluate said course for approval pursuant to R.S. 40:1379.3(D)(1)(b), (c), and (e). If the provider fails to provide training in a manner

consistent with the approved course syllabus and materials, the department shall revoke the provider's approval to conduct said courses.

2. The course syllabus shall include the name and address of the instructors and a certified true copy of the instructors' N.R.A. or P.O.S.T. instructor certification.

D. Any teaching or training required under this Part shall be conducted by a current NRA-certified or P.O.S.T.-certified instructor who has registered his name and certification with the department. In order to become registered and maintain that registration with the department an instructor shall:

1. submit a completed copy of DPSSP Form 6702 instructor information form;

2. submit a course syllabus that includes the curriculum described in LAC 55:I.1311.A and LAC 55:I.1307.D;

3. keep up to date his name, address, phone number, an e-mail address, and instructor certificates (on a yearly basis);

4. submit a contact number that may be released to applicants to schedule courses. The listing of an e-mail address is optional. In the event that the instructor's contact information is not valid or certification has expired, the instructor shall be removed from the department's approved instructor list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379.1, 40:1379.3, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:849 (September 1996), amended LR 28:1484 (June 2002), LR 38:1283 (May 2012).

§1313. Code of Conduct of Permittees

A. General Provisions

1. All permittees shall comply with all applicable federal and state laws and regulations.

2. Any violation of R.S. 40:1379.3 or 40:1382 shall also constitute a violation of these rules.

3. Each permittee shall meet and maintain all qualifications necessary to possess a concealed handgun permit.

B. Duties and Responsibilities of the Permittee

1. A permittee armed with a handgun shall notify any police officer who approaches the permittee in an official manner or with an identified official purpose that he has a handgun on his person, submit to a pat down, and allow the officer to temporarily disarm him. Failure to comply with this provision shall result in a six-month automatic suspension of the permit.

2. A permittee is prohibited from carrying a concealed handgun on his person while under the influence of alcoholic beverages or a controlled dangerous substance as defined in R.S. 40:961 and R.S. 40:964. For purposes of these rules, a permittee shall be considered under the influence as evidenced by a blood alcohol reading of 0.05 grams percent or greater by weight of alcohol in the blood, or when a blood test or urine test shows any confirmed presence of a controlled dangerous substance as defined in R.S. 40:961 and 40:964. When a law enforcement officer is made aware that a permittee is carrying a concealed handgun and the officer has reasonable grounds to believe that the permittee is under the influence of either alcoholic beverages or a controlled dangerous substance as defined in R.S. 40:961

and 40:964, the law enforcement officer may take temporary possession of the handgun and require the permittee to submit to a department certified chemical test. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered. Failure of the permittee to comply with the provisions of this Section shall result in a six-month automatic suspension of the concealed handgun permit.

3. Each permittee shall notify the department in writing of any change of address, name, phone number, or other information required in any application, including the effective date of the change, within 30 days of the effective date of the change. All notifications shall be submitted to the Concealed Handgun Permit Unit via certified mail, return receipt requested or via the unit's public website. Failure to comply with this provision may result in suspension or revocation of the permit.

4. A permittee shall notify the department of any misdemeanor or felony arrest or issuance of any summons other than a minor traffic violation, but including all arrests for operating a vehicle as defined in R.S. 14:98(A)(1) while under the influence of alcohol or other substances, in this state or any other jurisdiction, within 15 days of the arrest or issuance of the summons. Notice shall be sent via certified mail, return receipt requested to the department's designee responsible for the issuance of concealed handgun permits and shall include the date of arrest or summons, the arresting or issuing agency, jurisdiction in which the arrest occurred, the specific offense charged, whether the offense is classified as a felony or misdemeanor, the results of any chemical test which may have been administered in conjunction with the arrest or summons, a copy of any citation or summons issued, and any other pertinent information regarding the arrest or summons. Failure to notify the department in accordance with this Section shall result in a 90-day suspension of the permit.

5. When a permittee ceases to reside within this state, the permit automatically becomes invalid and the permittee shall return the concealed handgun permit to the department within five business days from the date he ceases to reside within this state. Upon receipt of the permit, the permit status shall be changed to "canceled." A new application shall be completed if the permittee resumes his resident status.

6. A permittee shall immediately return the concealed handgun permit to the department upon automatic suspension or revocation of the permit. If the permit is under suspension, failure to immediately return the permit to the department shall be grounds for revocation.

7. A permittee shall immediately inform the department in writing of any handgun related accident, discharge, incident, injury, or death involving any permittee. Failure to do so shall be grounds for suspension or revocation of an existing permit or denial of a renewal application.

8. Upon death of any permittee, the permittee's estate representative shall notify the department and return the concealed handgun permit to the department.

9. Any permittee or applicant who is subject to any preliminary or permanent injunction in any family or domestic dispute, or any other protective order issued pursuant to law, shall notify the department of the caption of

the suit including the suit or proceeding number, the date of the issuance of the injunction or court order, and provide a signed copy of the court's order within three days of the issuance of any such order. Upon the issuance of the injunction or court order, the permit shall be automatically suspended and the department may revoke or deny the permit in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379.1, 40:1379.3, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:850 (September 1996), amended LR 28:1484 (June 2002), LR 38:1284 (May 2012).

§1315. Appeal and Hearing Procedures

A. Notice of Permit Denial and Appeal

A.1. - C.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:851 (September 1996), amended LR 38:1285 (May 2012).

Jill P. Boudreaux
Undersecretary

1205#046

RULE

Department of Revenue Office of Alcohol and Tobacco Control

Participation in Hearing by Video Conference (LAC 55:VII.329 and 3119)

Under the authority of R.S. 26:99.1, 296.1, and 919.1 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, has adopted LAC 55.VII 329 and 3119 to provide the methods and requirements of utilizing teleconference, video link, or other visual remote communications technology for conducting any hearings authorized by the provisions of Title 26 of the Louisiana Revised Statutes and the regulations promulgated thereunder.

This adoption of the above-referenced rules is offered under the authority delegated and/or mandated by Act 86 of the 2011 Regular Session of the Louisiana Legislature and at the direction thereof in its enactment of 26:99.1, 296.1, and 919.1 to promulgate rules relative to the participation at hearings conducted by the Department of Revenue, Office of Alcohol and Tobacco Control through the use of telecommunications equipment.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 1. Beer and Liquor

Chapter 3. Liquor Credit Regulations

§329. Regulation XII—Participation in Hearing by Video Conference

A. To the extent practicable and if the parties do not object, the commissioner may authorize the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any hearing authorized by the provisions of Title 26 of the

Louisiana Revised Statutes and the regulations promulgated thereunder; unless prohibited by law.

B. Prior to authorizing the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing, the commissioner shall provide the permittee with written notice of his intent to do so. The notice shall be sent by certified mail to the permittee at the address of his place of business as given in his application for the permit and shall be sent not less than ten nor more than thirty calendar days from the scheduled hearing date. When so addressed and mailed, the notice shall be conclusively presumed to have been received by the permittee.

C. Any party objecting to the commissioner's authorization of the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any authorized hearing shall provide the commissioner with written notification of the objection at least five days prior to the scheduled hearing date. Upon receipt of any objection, the commissioner shall not allow the use of teleconference, video link, or other visual remote communications technology to conduct any portion of the hearing for which a proper objection was raised. Failure of a permittee to object in writing within at least five calendar days prior to the scheduled hearing date shall conclusively constitute a waiver of any objections.

D. Any use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing shall be done in real-time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 99.1, 296.1, and 919.1 and Act 88 of the 2011 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, LR 38:1285 (May 2012).

Subpart 2. Tobacco

Chapter 31. Tobacco Permits

§3119. Participation in hearing by video conference

A. To the extent practicable and if the parties do not object, the commissioner may authorize the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any hearing authorized by the provisions of Title 26 of the Louisiana Revised Statutes and the regulations promulgated thereunder; unless prohibited by law.

B. Prior to authorizing the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing, the commissioner shall provide the permittee with written notice of his intent to do so. The notice shall be sent by certified mail to the permittee at the address of his place of business as given in his application for the permit and shall be sent not less than 10 nor more than 30 calendar days from the scheduled hearing date. When so addressed and mailed, the notice shall be conclusively presumed to have been received by the permittee.

C. Any party objecting to the commissioner's authorization of the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any authorized hearing shall provide the commissioner with written notification of the objection at least five days prior to the scheduled hearing date. Upon receipt of any objection, the commissioner shall not allow

the use of teleconference, video link, or other visual remote communications technology to conduct any portion of the hearing for which a proper objection was raised. Failure of a permittee to object in writing within at least five calendar days prior to the scheduled hearing date shall conclusively constitute a waiver of any objections.

D. Any use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing shall be done in real-time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 99.1, 296.1, and 919.1 and Act 88 of the 2011 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, LR 38:1285 (May 2012).

Troy Hebert
Commissioner

1205#016

RULE

Department of Revenue Office of Alcohol and Tobacco Control

Regulation IX—Prohibition of Certain Unfair Business Practices (LAC 55:VII.317)

Under the authority of R.S. 26:150 and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, has amended LAC 55:VII.317 relative to unfair business practices.

This amendment to the above-referenced Rule is offered under authority delegated by and at the direction of the Louisiana Legislature in its amendment and re-enactment of R.S. 26:150 to promulgate rules relative to unfair business practices.

Title 55 PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 1. Beer and Liquor

Chapter 3. Liquor Credit Regulations

§317. Regulation IX—Prohibition of Certain Unfair Business Practices

A. Definitions

* * *

Manufacturer—any person who, directly or indirectly, personally or through any agency, engages in the making, blending, rectifying, or other processing of alcoholic beverages in Louisiana or outside the state for shipments to licensed wholesale dealers within the state.

* * *

B. - C.2.n.viii. ...

D. As part of an original and each permit renewal application, every manufacturer, wholesaler and retailer shall certify in writing that the applicant and all persons acting on behalf of the applicant understands and agrees to comply with the market practices regulations provided for by law

and these regulations. Specifically, every manufacturer, wholesaler and retailer shall certify in writing that:

1. the applicant understands that manufacturers and/or wholesalers are prohibited from providing a retailer with anything of value unless explicitly enumerated as an exception in the Alcoholic Beverage Control Law or these regulations;

2. manufacturers and wholesalers are prohibited from inducing or otherwise influencing, directly or indirectly, a retailer from selling and/or serving its products to the exclusion, in whole or in part, of products of other manufacturers and/or wholesalers including but not limited to illegally influencing the retailer in any way regarding the quantity or brand of alcoholic beverages bought or sold by a retailer; and retailers are prohibited from accepting or requiring any such inducement or other influence; and

3. if anyone violates the market practices laws and regulations of the state of Louisiana, the United States or any other state, their permit(s) is subject to suspension, revocation and/or assessment of a fine or other penalty provided for by law.

E. Penalty. The commissioner of the Office of Alcohol and Tobacco Control may seek suspension or revocation of the permit or permits of a violator and may impose such other penalties or administrative remedies against violators as are prescribed by law for violations of the Alcoholic Beverage Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:150

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Alcoholic Beverage Control, LR 4:463 (November 1978), amended LR 5:11 (January 1979), amended by the Department of Public Safety and Corrections, Office of Alcoholic Beverage Control, LR 17:607 (June 1991), LR 20:671 (June 1994), amended by the Department of Revenue and Taxation, Office of Alcoholic Beverage Control, LR 22:116 (February 1996), LR 26:2631 (November 2000), LR 28:1484 (June 2002), LR 31:1344 (June 2005), amended by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 35:89 (January, 2009), LR 38:1286 (May 2012).

Troy Hebert
Commissioner

1205#015

RULE

Workforce Commission Office of Workers' Compensation

Utilization Review Procedures (LAC 40:I.2715 and 2717)

Editor's Note: The following Sections are being repromulgated to correct citation errors. The original Rule can be viewed in its entirety on pages 1030-1038 of the April 20, 2012 edition of the *Louisiana Register*.

The Office of Workers' Compensation published a Notice of Intent to amend its rules in the December 20, 2011 edition of the *Louisiana Register*. The notice solicited written comments. As a result of its analysis of the written comments received, the OWCA proposes the final Rule to read as follows.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 2. Medical Guidelines

Chapter 27. Utilization Review Procedures

§2715. Medical Treatment Schedule Authorization and Dispute Resolution

A. Purpose. It is the purpose of this Section to facilitate the management of medical care delivery, assure an orderly and timely process in the resolution of care-related disputes; identify the required medical documentation to be provided to the carrier/self-insured employer to initiate a request for authorization as provided in R.S. 23:1203.1(J); and provide for uniform forms, timeframes, and terms for suspension of prior authorization process, withdrawal of request for authorization, authorization, denial, and dispute resolution in accordance with R.S. 23:1203.1.

B. Statutory Provisions

1. Emergency Care

a. In addition to all other utilization review rules and procedures, R.S. 23:1142 provides that no prior consent by the carrier/self-insured employer is required for any emergency medical procedure or treatment deemed immediately necessary by the treating health care provider. Any health care provider who authorizes or orders diagnostic testing or treatment subsequently held not to have been of an emergency nature shall be responsible for all of the charges incurred in such testing or treatment. Such health care provider shall bear the burden of proving the emergency nature of the diagnostic testing or treatment.

b. Fees for those services of the health care provider held not to have been of an emergency nature shall not be an enforceable obligation against the employee or the employer or the employer's workers' compensation insurer unless the employee and the payor have agreed upon the treatment or diagnostic testing by the health care provider.

2. Non-Emergency Care. In addition to all other utilization review rules and procedures, the law (R.S. 23:1142) establishes a monetary limit for non-emergency medical care. No health care provider shall incur more than a total of \$750 in non-emergency diagnostic testing or treatment without the mutual consent of the carrier/self-insured employer and the employee. The statute further provides significant penalties for a carrier's/self-insured employer's arbitrary and capricious refusal to approve necessary care beyond that limit.

3. Medical Treatment Schedule

a. In addition to all other utilization review rules and procedures, R.S. 23:1203.1 provides that after the promulgation of the medical treatment schedule, medical care, services, and treatment due, pursuant to R.S. 23:1203 et seq., by the employer to the employee shall mean care, services, and treatment in accordance with the medical treatment schedule.

b. Pursuant to R.S. 23:1203.1(I), medical care, services, and treatment that varies from the promulgated medical treatment schedule shall also be due by the employer when it is demonstrated to the medical director of the Office of Workers' Compensation by a preponderance of the scientific medical evidence, that a variance from the medical treatment schedule is reasonably required to cure or

relieve the injured worker from the effects of the injury or occupational disease given the circumstances.

c. Pursuant to R.S. 23:1203.1(M), with regard to all treatment not covered by the medical treatment schedule, all medical care, services, and treatment shall be in accordance with Subsection D of R.S. 23:1203.1.

d. All requests for authorization of care beyond the statutory non-emergency monetary limit of \$750 are to be presented to the carrier/self-insured employer. In accordance with these Utilization Review Rules, the carrier/self-insured employer or a utilization review company acting on its behalf shall determine if such request is in accordance with the medical treatment schedule. If the request is denied or approved with modification and the health care provider determines to request a variance from the medical director, then a LWC-WC-1009 shall be filed as provided in Subsection G of this Section.

e. Disputes shall be filed by any aggrieved party on a LWC-WC-1009 within 15 calendar days of receipt of the denial or approval with modification of a request for authorization. The medical director shall render a decision as soon as practicable, but in no event later than 30 calendar days from the date of filing. The decision shall determine whether:

i. the recommended care, services, or treatment is in accordance with the medical treatment schedule; or

ii. a variance from the medical treatment schedule is reasonably required; or

iii. the recommended care, services, or treatment that is not covered by the medical treatment schedule is in accordance with another state's adopted guideline pursuant to Subsection D of R.S. 23:1203.1.

f. In accordance with LAC 40:I.5507.C, any party feeling aggrieved by the R.S. 23:1203.1(J) determination of the medical director shall seek a judicial review by filing a Form LWC-WC-1008 in a workers' compensation district office within 15 calendar days of the date said determination is mailed to the parties. A party filing such appeal must simultaneously notify the other party that an appeal of the medical director's decision has been filed. Upon receipt of the appeal, the workers' compensation judge shall immediately set the matter for an expedited hearing to be held not less than 15 days nor more than 30 calendar days after the receipt of the appeal by the office. The workers' compensation judge shall provide notice of the hearing date to the parties at the same time and in the same manner.

g. R.S. 23:1203.1(J) provides that after a health care provider has submitted to the carrier/self-insured employer the request for authorization and the information required pursuant to this Section, the carrier/self-insured employer shall notify the health care provider of their action on the request within five business days of receipt of the request.

C. Minimum Information for Request of Authorization

1. Initial Request for Authorization. The following criteria are the minimum submission by a health care provider requesting care beyond the statutory non-emergency medical care monetary limit of \$750 and will accompany the LWC-WC-1010:

a. history provided to the level of the condition and as provided in the medical treatment schedule;

b. physical findings/clinical tests;

- c. documented functional improvements from prior treatment, if applicable;
- d. test/imaging results; and
- e. treatment plan including services being requested along with the frequency and duration.

2. To make certain that the request for authorization meets the requirements of this Subsection, the health care provider should review the medical treatment schedule for each area(s) of the body to obtain specific detailed information related to the specific services or diagnostic testing that is included in the request. Each section of the medical treatment schedule contains specific recommendations for clinical evaluation, treatment and imaging/testing requirements. The medical treatment guidelines can be viewed on Louisiana's Workforce Commission website. The specific URL is http://www.laworks.net/WorkersComp/OWC_MedicalGuidelines.asp.

3. Subsequent Request for Authorizations. After the initial request for authorization, subsequent requests for additional diagnostic testing or treatment does not require that the healthcare provider meet all of the initial minimum requirements listed above. Subsequent requests require only updates to the information of Subparagraph 1.a-e above. However such updates must demonstrate the patient's current status to document the need for diagnostic testing or additional treatment. A brief history, changes in clinical findings such as orthopedic and neurological tests, and measurements of function with emphasis on the current, specific physical limitations will be important when seeking approval of future care. The general principles of the medical treatment schedule are:

- a. the determination of the need to continue treatment is based on functional improvement; and
- b. the patient's ability (current capacity) to return to work is needed to assist in disability management.

D. Submission and Process for Request for Authorization

1. To initiate the request for authorization of care beyond the statutory non-emergency medical care monetary limit of \$750 per health care provider, the health care provider shall submit LWC-WC-1010 along with the required information of this Section by fax or email to the carrier/self insured employer.

2. The carrier/self-insured employer shall provide to the OWC a fax number and/or email address to be used for purposes of these rules and particularly for LWC-WC-1010 and 1010A. If the fax number and/or email address provided is for a utilization review company contracted with the carrier/self-insured employer, then the carrier/self-insured employer shall provide the name of the utilization review company to the OWC. All carrier/self-insured employer fax numbers and/or email addresses provided to the OWC will be posted on the office's website at www.laworks.net. If the fax number or e-mail address is for a contracted utilization review company, then the OWC will also post on the web the name of the utilization review company. When requesting authorization and sending the LWC-WC-1010 and 1010A, the health care provider shall use the fax number and/or email address found on the OWC website.

3. Pursuant to R.S. 23:1203.1, the five business days to act on the request for authorization does not begin for the carrier/self-insured employer until the information of

Subsection C and LWC-WC-1010 is received. In the absence of the submission of such information, any denial of further non-emergency care by the carrier/self-insured employer is prima facie, not arbitrary and capricious.

E. First Request

1. If a carrier/self-insured employer determines that the information required in Subsection C of this Section has not been provided, then the carrier/self-insured employer shall, within five business days of receipt of LWC-WC-1010, notify the health care provider of its determination. Notice shall be by fax or e-mail to the healthcare provider and shall include the provider-submitted LWC-WC-1010 with the "first request" section completed to indicate a delay due to lack of information and LWC-WC-1010A identifying the information that was not provided. A copy of the LWC-WC-1010 and all information faxed or emailed to the health care provider shall also be faxed or emailed to the claimant attorney, if any. On the same business day, a copy of the LWC-WC-1010 and all information faxed or emailed to the health care provider shall also be sent by regular mail to the claimant's last known address.

a. The health care provider must respond by fax or e-mail to the carrier/self-insured employer's request for additional information within 10 business days of receipt of the request.

b. If the health care provider agrees that the additional information from the first request is due, then such information shall be provided along with LWC-WC-1010 and 1010A.

c. If the health care provider disagrees that the additional information in the first request is due, then the health care provider shall return the LWC-WC-1010 and 1010A with an explanation describing why the health care provider believes all required information has been previously provided.

d. If the health care provider fails to respond to the first request within 10 business days of receipt, then such failure to respond shall result in a withdrawal of the request for authorization without further action by the OWC or the carrier/self-insured employer. In order to obtain authorization for care the health care provider will be required to initiate a new request for authorization with a new LWC-WC-1010 pursuant to this Section.

e. The carrier/self-insured employer must respond by fax or e-mail within five business days of receipt of a timely submitted response from the health care provider:

i. if the health care provider responds timely with additional information and the carrier/self-insured employer determines that the requested information has been provided, then the carrier/self-insured employer has five business days to act on the request for authorization pursuant to R.S. 23:1203.1(J) and these rules. Subsection G of this Section provides the rules regarding whether a request for authorization is approved, approved with modification, or denied;

ii. if the health care provider responds timely with additional information but the carrier/self-insured employer determines that the requested information has again not been provided, then the carrier/self-insured employer shall return LWC-WC-1010 to the health care provider, and indicate suspension of prior authorization process due to lack of information;

iii. if the health care provider responds timely with the appropriate forms and an explanation as to why no additional information is necessary; and

iv. the carrier/self-insured employer determines that the request for information has been satisfied, then the carrier/self-insured employer has five business days to act on the request for authorization pursuant to R.S. 23:1203.1(J) and these rules. Subsection G of this Section provides the rules regarding whether a request for authorization is approved, approved with modification, or denied;

v. the carrier/self-insured employer determines that the requested information has still not been provided, then the carrier/self-insured employer shall return to the health care provider the LWC-WC-1010 indicating suspension of prior authorization process due to lack of information.

2.a. A carrier/self-insured employer who fails to return LWC-WC-1010 within the five business days as provided in this Subsection is deemed to have denied such request for authorization. A health care provider, claimant, or claimant's attorney if represented who chooses to appeal a denial pursuant to this Subsection shall file a LWC-WC-1009 pursuant to Subsection J of this Section.

b. A request for authorization that is deemed denied pursuant to this Subparagraph may be approved by the carrier/self-insured employer within 10 calendar days of being deemed denied. The approval will be indicated in section 3 of LWC-WC-1010. The medical director shall dismiss any appeal that may have been filed by a LWC-WC-1009. The carrier/self-insured employer shall be given a presumption of good faith regarding the decision to change the denial to an approval provided that the LWC-WC-1010 which indicates "approved" in section 3 is faxed or emailed within the 10 calendar days.

F. Appeal of Suspension of Prior Authorization Process

1. If the health care provider disagrees with the suspension of prior authorization process, the provider, within five business days of receipt of the suspension, shall file an appeal with the medical services section of the OWC. The appeal shall include:

a. a copy of the LWC-WC-1010 submitted to the carrier/self-insured employer. The health care provider should complete the appropriate section of the form indicating that an appeal is being requested; and

b. a copy of LWC-WC-1010A; and

c. a copy of all information previously submitted to the carrier/self-insured employer.

2. The medical services section shall, within 10 business days of receipt of the filed LWC-WC-1010:

a. determine whether the information provided satisfied the provisions of Subsection C of this Section; and

b. issue a written determination to the health care provider, claimant and carrier/self-insured employer.

3. If the medical services section determines that the requested information was not provided, then the health care provider will be required to submit the information to the carrier/self-insured employer within five business days of receipt of the decision of the medical services section.

a. If the information is provided as required by decision of the medical services section, the carrier/self-insured employer shall have five business days to act on the request for authorization pursuant to R.S. 23:1203.1(J) and

these rules. Subsection G of this Section provides the rules regarding a request for authorization being approved, approved with modification, or denied.

b. Failure of the health care provider to provide the information within five business days of receipt of the decision of the medical services section shall result in a withdrawal of the request for authorization without further action by the OWC or the carrier/self-insured employer. In order to obtain authorization, the medical provider will be required to initiate a new request for authorization pursuant to this Section.

4. If the medical services section determines that the requested information was provided, then within five business days of receipt of the decision of the medical services section decision, the carrier/self-insured employer shall act on the request for authorization pursuant to R.S. 23:1203.1(J) and these rules with the information as previously provided. Subsection G of this Section provides the rules regarding a request for authorization being approved, approved with modification, or denied.

5. Failure of the carrier/self-insured employer to act on the request within the five business days will be deemed a denial of the request for authorization. A health care provider, claimant, or claimant's attorney if represented who chooses to appeal a denial pursuant to this subparagraph shall file a LWC-WC-1009 pursuant to Subsection J of this Section.

6. A request for authorization that is deemed denied pursuant to this subparagraph may be approved by the carrier/self-insured employer within 10 calendar days of being deemed denied. The approval will be indicated in section 3 of LWC-WC-1010. The medical director shall dismiss any appeal that may have been filed by a LWC-WC-1009. The carrier/self-insured employer shall be given a presumption of good faith regarding the decision to change the denial to an approval provided that the LWC-WC-1010 which indicates "approved" in section 3 is faxed or emailed within the 10 calendar days.

G. Approval or Denial of Authorization for Care

1. Request for authorization covered by the medical treatment schedule. Upon receipt of the LWC-WC-1010 and the required medical information in accordance with this Section, the carrier/self-insured employer shall have five business days to notify the health care provider of the carrier/self-insured employer's action on the request. Based upon the medical information provided pursuant to this Section the carrier/self-insured employer will determine whether the request for authorization is in accordance with the medical treatment schedule:

a. the carrier/self-insured employer will return to the health care provider Form 1010, and indicate in the appropriate section on the form that "The requested treatment or testing is approved" if the request is in accordance with the medical treatment schedule; or

b. the carrier/self-insured employer will return to the health care provider, claimant, and the claimant's attorney if one exists, the LWC-WC-1010, and indicate in the appropriate section on the form "The requested treatment or testing is approved with modification" if the carrier/self-insured employer determines that modifications are necessary in order for the request for authorization to be in accordance with the medical treatment schedule, or that a

portion of the request for authorization is denied because it is not in accordance with the medical treatment schedule. The carrier/self insured employer shall include with the LWC-WC-1010 a summary of reasons why a part of the request for authorization is not in accordance with the medical treatment schedule and explain any modification to the request for authorization. The LWC-WC-1010 and the summary of reasons shall be faxed or emailed to the health care provider and to the claimant attorney, if any. On the same business day, a copy of the LWC-WC-1010 and the summary of reasons shall also be sent by regular mail to the claimant's last known address; or

c. the carrier/self-insured employer will return to the health care provider, the claimant, and the claimant's attorney if one exists, the LWC-WC-1010, and indicate in the appropriate section on the form "the requested treatment or testing is denied" if the carrier/self-insured employer determines that the request for authorization is not in accordance with the medical treatment schedule. The carrier/self-insured employer shall include with the LWC-WC-1010 a summary of reasons why the request for authorization is not in accordance with the medical treatment schedule. The LWC-WC-1010 and the summary of reasons shall be faxed or mailed to the health care provider and to the claimant attorney, if any. On the same business day, a copy of the LWC-WC-1010 and the summary of reasons shall also be sent by regular mail to the claimant's last known address.

2. Request for Authorization not Covered by the Medical Treatment Schedule. Requests for authorization of medical care, services, and treatment that are not covered by the medical treatment schedule in accordance to R.S. 23:1203.1(M), must follow the same prior authorization process established for all other requests for medical care, services, and treatment. A request for authorization that is not covered by the medical treatment schedule exists when the requested care, services, or treatment are for a diagnosis not addressed by the medical treatment schedule. The health care Provider requesting care, services, or treatment that is not covered by the medical treatment schedule may submit documentation sufficient to establish that the request is in accordance with R.S. 23:1203.1(D). After timely receipt of the LWC-WC-1010, the submitted documentation if any, and the required medical information in accordance with this Section, the carrier/self-insured employer shall determine whether the request for authorization is in accordance with R.S. 23:1203.1(D). In making this determination, the carrier/self-insured employer shall review the submitted documentation, but may apply another guideline that meets the criteria of R.S. 23:1203.1(D). The carrier/self-insured employer has five business days to notify the health care provider of the carrier/self-insured employer's action on the request:

a. the carrier/self-insured employer will return to the health care provider the LWC-WC-1010, and indicate in the appropriate section on the form that "The requested treatment or testing is approved" if the request is in accordance with R.S. 23:1203.1(D); or

b. the carrier/self-insured employer will return to the health care provider, claimant, and the claimant's attorney if one exists, the LWC-WC-1010, and indicate in

the appropriate section on the form "The requested treatment or testing is approved with modification" if the carrier/self-insured employer determines that modifications are necessary in order for the request for authorization to be in accordance with R.S. 23:1203.1(D), or that a portion of the request for authorization is denied because it is not in accordance with R.S.23:1203.1(D). The carrier/self insured employer shall include with the LWC-WC-1010 a summary of reasons why a part of the request for authorization is not in accordance with R.S. 23:1203.1(D). The LWC-WC-1010 and the summary of reasons shall be faxed or emailed to the health care provider and to the claimant attorney, if any. On the same business day a copy of the LWC-WC-1010 and the summary of reasons shall also be sent by regular mail to the claimant's last known address; or

c. the carrier/self-insured employer will return to the health care provider, the claimant, and the claimant's attorney if one exists, the LWC-WC-1010, and indicate in the appropriate section on the form "the requested treatment or testing is denied" if the carrier/self-insured employer determines that the request for authorization is not in accordance with R.S. 23:1203.1(D). The carrier/self-insured employer shall include with the LWC-WC-1010 a summary of reasons why the request for authorization is not in accordance with R.S. 23:1203.1(D). The LWC-WC-1010 and the summary of reasons shall be faxed or emailed to the health care provider and to the claimant attorney, if any. On the same business day a copy of the LWC-WC-1010 and the summary of reasons shall also be sent by regular mail to the claimant's last known address.

3. Summary of Reasons. The summary of reasons provided by the carrier/self-insured employer with the approval with modification or denial shall include:

- i. the name of the employee;
- ii. the date of accident;
- iii. the name of the health care provider requesting authorization;
- iv. the decision (approved with modification, denied);
- v. the clinical rationale to include a brief summary of the medical information reviewed;
- vi. the criteria applied to include specific references to the medical treatment schedule, or to the guidelines adopted in another state if the requested care, services or treatment is not covered by the medical treatment schedule; and
- vii. a Section labeled "Voluntary Reconsideration" pursuant to Paragraph I.2 of this Section that includes a phone number that will allow the health care provider to speak to a person with the carrier/self-insured employer or its utilization review company with authority to reconsider a denial or approval with modification.

4. Upon receipt of the LWC-WC-1010 and the required medical information in accordance with this Section, the carrier/self-insured employer shall have five business days to notify the health care provider of the carrier/self-insured employer's action on the request. Based upon the medical information provided pursuant to this Section, and other information known to the carrier/self-insured employer at the time of the request for authorization, the carrier will return to the health care provider, claimant,

and claimant's attorney if one exists, the LWC-WC-1010 and indicate in the appropriate section on the form "the requested treatment or testing is denied because:

- a. "the request for authorization or a portion thereof is not related to the on-the-job injury;" or
- b. "the claim is non-compensable;" or
- c. "other" and provide a brief explanation for the basis of denial.

5. The LWC-WC-1010 and the summary of reasons shall be faxed or emailed to the health care provider and the claimant attorney, if any. On the same business day a copy of the LWC-WC-1010 and the summary of reasons shall also be sent by regular mail to the claimant's last known address.

H. Failure to respond by carrier/self-insured employer. a carrier/self-insured employer who fails to return LWC-WC-1010 with section 3 completed within the five business days to act on a request for authorization as provided in this Section is deemed to have denied such request for authorization. A health care provider, claimant, or claimant's attorney if represented who chooses to appeal a denial pursuant to this Subparagraph shall file a LWC-WC-1009 pursuant to Subsection J of this Section.

I. Reconsideration Prior to LWC-WC-1009 Decision

1. R.S. 23:1203.1(L) provides that it is the intent of the legislature that, with establishment of the medical treatment schedule, medical and surgical treatment, hospital care, and other health care provider services shall be delivered in an efficient and timely manner to injured employees.

2. In furtherance of that goal, the LWC-WC-1010 and the summary of reasons provided by the carrier/self-insured employer with the denial or approved with modification will include a statement that the health care provider is encouraged to contact the carrier/self insured employer to discuss reconsideration of the denial or approval with modification. The carrier/self insured employer shall include on the summary of reasons a section labeled "voluntary reconsideration," and include a phone number that will allow the health care provider to speak to a person with the carrier/self-insured employer or its utilization review company with authority to reconsider the previous denial or approval with modification.

3. Reconsideration after denied or approved with modification. If the carrier/self-insured employer determines that the requested care should now be approved, it will return to the health care provider, the claimant, and the claimant's attorney if one exists within 10 calendar days of the denial or approval with modification, the LWC-WC-1010, and in the appropriate section on the form indicate "the prior denied or approved with modification request is now approved." Such approval ends the utilization review process as it relates to the request. A LWC-WC-1009 or 1008 shall not be filed regarding such request. The carrier/self-insured employer shall be given a presumption of good faith regarding the decision to change its decision of denied or approved with modification to approved after discussing the request with the health care provider.

4. Reconsideration after deemed denied due to failure to respond. A request for authorization that is deemed denied pursuant to Subsection H of this Section may be approved by the carrier/self-insured employer within 10 calendar days of the request for authorization as indicated on the LWC-

WC-1010. The approval will be indicated in Section 3 of LWC-WC-1010. The medical director shall dismiss any appeal that may have been filed by a LWC-WC-1009. The carrier/self-insured employer shall be given a presumption of good faith regarding the decision to change the denial to an approval provided that the LWC-WC-1010 which indicates "approved" in Section 3 is faxed or emailed within 10 calendar days of the request for authorization.

J. Review of denial, approved with modification, deemed denied, or variance by LWC-WC-1009.

1. Any aggrieved party who disagrees with a request for authorization that is denied, approved with modification, deemed denied pursuant to Paragraphs E.2, F.5, and Subsection H, or who seeks a determination from the medical director with respect to medical care, services, and treatment that varies from the medical treatment schedule shall file a request for review with the OWC. The request for review shall be filed within 15 calendar days of:

a. receipt of the LWC-WC-1010 by the health care provider indicating that care has been denied or approved with modification; or

b. the expiration of the fifth business day without response by the carrier/self-insured employer pursuant to Paragraphs E.2, F.5, and Subsection H of this Section.

2. The request for review shall include:

a. LWC-WC-1009 which shall state the reason for review is either;

i. a request for authorization that is denied; or

ii. a request for authorization that is approved with modification; or

iii. a request for authorization that is deemed denied pursuant to Paragraphs, E.2, F.5, and Subsection H; or

iv. a variance from the medical treatment schedule is warranted; and

b. a copy of LWC-WC-1010 which shows the history of communications between the health care provider and the carrier/self-insured employer that finally resulted in the request being denied or approved with modification; and

c. all of the information previously submitted to the carrier/self-insured employer; and

d. in cases where a variance has been requested, the health care provider or claimant shall also provide any other evidence supporting the position of the health care provider or the claimant including scientific medical evidence demonstrating that a variance from the medical treatment schedule is reasonably required to cure or relieve the claimant from the effects of the injury or occupational disease given the circumstances.

3. In cases where the requested care, services, or treatment are not covered by the medical treatment schedule pursuant to R.S. 23:1203.1(M):

i. the health care provider may also submit with the LWC-WC-1009 the documentation provided to the carrier/self-insured employer pursuant to Paragraph G.2 of this Section; and

ii. the carrier/self-insured employer may submit to the medical director within five business days of receipt of the LWC-WC-1009 from the health care provider or claimant the documentation used to deny or approve with modification the request for authorization pursuant to R.S. 23:1203.1(D). A copy of the information being submitted to

the medical director must be provided by fax or email to the health care provider and claimant attorney, if any, and on the same business day to the claimant by regular mail at his last known address.

4. The health care provider or claimant filing the LWC-WC-1009 shall certify that such form and all supporting documentation has been sent to the carrier/self-insured employer by email or fax. The OWC shall notify all parties of receipt of a LWC-WC-1009.

5.a. Within five business days of receipt of the LWC-WC-1009 from the health care provider or claimant, the carrier/self-insured employer shall provide to the medical director, with a copy going to the health care provider or claimant attorney, if any, via fax or email and on the same business day to the claimant via regular mail at his last known address, any evidence it thinks pertinent to the decision regarding the request being denied, approved with modification, deemed denied, or that a variance from the medical treatment schedule is warranted.

b. The medical director shall within 30 calendar days of receipt of the LWC-WC-1009, and consideration of any medical evidence from the carrier/self-insured employer if provided within such five business days, render a decision as to whether the request for authorization is medically necessary and is:

i. in accordance with the medical treatment schedule; or

ii. in accordance with R.S. 23:1203.1(D) if such request is not covered by the medical treatment schedule, or

iii. whether the health care provider or claimant demonstrates by a preponderance of the scientific medical evidence that a variance from the medical treatment schedule is reasonably required. The decision of the medical director shall be provided in writing to the health care provider, claimant, claimant's attorney if one exists, and Carrier/Self-Insured Employer.

c. The decision of the medical director shall include:

- i. the date the decision is mailed; and
- ii. the name of the employee; and
- iii. the date of accident; and
- iv. the decision of the medical director; and
- v. the clinical rationale to include a summary of the medical information reviewed; and
- vi. the criteria applied to make the LWC-WC-1009 decision.

K. Appeal of 1009 Decision by Filing 1008

1. In accordance with LAC 40:I.5507.C, any party feeling aggrieved by the R.S. 23:1203.1(J) determination of the medical director shall seek a judicial review by filing a Form LWC-WC-1008 in a workers' compensation district office within 15 calendar days of the date said determination is mailed to the parties. The filed LWC-WC-1008 shall include a copy of the LWC-WC-1009 and the decision of the medical director. A party filing such appeal must simultaneously notify the other party that an appeal of the medical director's decision has been filed. Upon receipt of the appeal, the workers' compensation judge shall immediately set the matter for an expedited hearing to be held not less than 15 calendar days nor more than 30 calendar days after the receipt of the appeal by the office. The workers' compensation judge shall provide notice of the

hearing date to the parties at the same time and in the same manner. The decision of the medical director may only be overturned when it is shown, by clear and convincing evidence that the decision was not in accordance with the provisions of R.S. 23:1203.1.

L. Variance to Medical Treatment Schedule

1. Requests for authorization of medical care, services, and treatment that may vary from the medical treatment schedule must follow the same prior authorization process established for all other requests for medical care, services, and treatment that require prior authorization. If a request is denied or approved with modification, and the health care provider or claimant determines to seek a variance from the medical director, then a LWC-WC-1009 shall be filed as provided in Subsection J of this Section. The health care provider, claimant, or claimant's attorney filing the LWC-WC-1009 shall submit with such form the scientific medical literature that is higher ranking and more current than the scientific medical literature contained in the medical treatment schedule, and which supports approval of the variance.

2. A variance exists in the following situations.

a. The requested care, services, or treatment is not recommended by the medical treatment schedule although the diagnosis is covered by the medical treatment schedule.

b. The requested care, services, or treatment is recommended by the medical treatment schedule, but for a different diagnosis or body part.

c. The requested care, services, or treatment involves a medical condition of the claimant that complicates recovery of the claimant that is not addressed by the medical treatment schedule.

M. Emergency Care. In addition to all other rules and procedures, the health care provider who provides care under the "medical emergency" exception must demonstrate that it was a "medical emergency" in the following manner:

a. by demonstrating that the illness or condition presents one or more of the following findings:

i. Severity of Illness Criteria:

(a). Sudden Onset of Unconsciousness or Disorientation (coma or unresponsiveness);

(b). Pulse Rate:

(i). less than 50 per minute;

(ii). greater than 140 per minute;

(c). Blood Pressure:

(i). systolic less than 90 or greater than 200 mm Hg.;

(ii). diastolic less than 60 or greater than 120 mm Hg.;

(d). acute loss of sight or hearing;

(e). acute loss of ability to move body part;

(f). persistent fever equal to or greater than 100 (p.o.) or greater than 101(r) for more than five days;

(g). active bleeding;

(h). severe electrolyte/blood gas abnormality (any of the following:

(i). Na < 124 mEq/L, or Na > 156 mEq/L;

(ii). K < 2.5 mEq/L, or K > 6.0 mEq/L;

(iii). CO₂ combining power [unless chronically abnormal] < 20 mEq/L, or CO₂ combining power [unless chronically abnormal] > 36 mEq/L;

(iv). blood ph < 7.30, or blood ph > 7.45);

(i). acute or progressive sensory, motor, circulatory or respiratory embarrassment sufficient to incapacitate the patient (inability to move, feed, breathe, etc.).

NOTE: Must also meet Intensity of Service criterion simultaneously in order to certify. Do not use for back pain.

(j). EKG evidence of acute ischemia; must be suspicion of a new MI;

(k). wound dehiscence or evisceration.

ii. Intensity of Service Criteria

(a). Intravenous medications and/or fluid replacement (does not include tube feedings);

(b). surgery or procedure scheduled within 24 hours requiring:

(i). general or regional anesthesia; or

(ii). use of equipment, facilities, procedure available only in a hospital;

(c). vital sign monitoring every two hours or more often (may include telemetry or bedside cardiac monitor);

(d). chemotherapeutic agents that require continuous observation for life threatening toxic reaction;

(e). treatment in an I.C.U.;

(f). intramuscular antibiotics at least every eight hours;

(g). intermittent or continuous respirator use at least every eight hours;

NOTE: If at least one criterion is satisfied from both the severity of illness criteria and the intensity of service criteria, the service is considered to be emergency.

b. by demonstrating by other objective criteria that the treatment was necessary to prevent death, or serious permanent impairment to the patient.

N. Change of Physician

1. Requests for change of treating physician within one field or specialty shall be made in writing to the carrier/self-insured employer and shall contain a clear statement of the reason for the requested change. Having exhausted the monetary limit for non-emergency treatment is insufficient justification, without other reasons. The carrier/self-insured employer shall notify all parties of the request, and of their action on the request, within five calendar days of date of receipt of the request. Failure to timely respond may result in assessment of penalties by the hearing officer.

2. Disputes over change of physician will be resolved in accordance with R.S. 23:1142(B).

O. Opposing Medical Opinions. In the event that there are opposing medical opinions regarding claimant's condition or capacity to work, the Office of Workers' Compensation Administration will appoint an independent medical examiner of the appropriate licensure class to examine the claimant, or review the medical records at issue. The expense of this examination will be set by the director and will be borne by the carrier/self-insured employer.

AUTHORITY NOTE: Promulgated in accordance with RS 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:263 (March 1991), repromulgated LR 17:653 (July 1991), repromulgated LR 18:257 (March 1992), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 38:1030 (April 2012), repromulgated LR 38:1287 (May 2012).

§2717. Medical Review Guidelines

A. Workers' Compensation is designed to provide indemnity and medical care benefits for workers who sustain injuries or illnesses arising out of and in the course and scope of employment. The following instructions give some general guidelines for medical review of workers' compensation claims.

B. Technical Considerations for Review of Claims

1. Prior to a detailed medical review, a cursory review of the claim should be accomplished and should include at least the following.

a. Job related illness/injury must be identified.

b. Each service/item billed must be identifiable.

c. Billing period must be identified.

d. Appropriate forms must be used and filled out completely.

2. If the cursory review indicates that sufficient information is present, processing of the claim can proceed. If the review indicates information is lacking, the carrier/self-insured employer must take immediate and appropriate action to obtain the information required. The "timely payment" provision contained in the statement of policy in this manual will not apply until the required information is obtained. However, absence of nonessential information is not justification for delay in claim processing.

C. Functions of Medical Review. The carrier/self-insured employer should use a program of prevention and detection to guarantee the most appropriate and economical use of health care resources for claimants.

1. Prevention through Education. Informing physicians and other health care providers about workers' compensation programs, policies and statutory provisions that deal with claim submission is the key to ensuring the appropriate billing of covered services. As part of that educational focus, the following are some of the administrative policies encountered in the review process:

a. quality of care;

b. medical necessity;

c. screening tests;

d. confidentiality;

e. general documentation requirements.

2. Quality of Care. Quality care should:

a. be provided in a timely manner, without inappropriate delay, interruption, premature termination or prolongation of treatment, and emphasize an early, safe return to work;

b. seek the patient's cooperation and participation in the decisions and process of his or her treatment;

c. be based on accepted principles of evidence based practice as established in R.S. 23:1203.1 and the skillful and appropriate use of other health professionals and technology;

d. be provided with sensitivity to the stress and anxiety that illness can cause, and with concern for the patient's and family's overall welfare and should focus on improvement in function related to the physical demands of the injured workers' job;

e. use technology and other resources efficiently to achieve the treatment goal;

f. be sufficiently documented in the patient's medical record to allow continuity of care and peer evaluation.

3. Medical Necessity

a. The workers' compensation law provides benefits only for services that are medically necessary for the diagnosis or treatment of a claimant's work related illness, injury, symptom or complaint. *Medically necessary* or *medical necessity* shall mean health care services that are:

i. clinically appropriate, in terms of type, frequency, extent, site, and duration, and effective for the patient's illness, injury, or disease; and

ii. in accordance with the medical treatment schedule and the provisions of R.S. 23:1203.1.

b. To be medically necessary, a service must be:

i. consistent with the diagnosis and treatment of a condition or complaint; and

ii. in accordance with the Louisiana medical treatment schedule; and

iii. not solely for the convenience of the patient, family, hospital or physician; and

iv. furnished in the most appropriate and least intensive type of medical care setting required by the patient's condition.

c. Services not related to the diagnosis or treatment of a work related illness or injury are not payable under the workers' compensation laws and shall be the financial responsibility of the claimant, and in appropriate cases, his health insurance carrier.

4. - 9. ...

D. Professional Justification

1. Medical Necessity. All claims submitted for payment to the carrier/self-insured employer must be reviewed for medical necessity and for compliance with the medical treatment schedule and the provisions of R.S. 23:1201.1. Medical necessity implies the use of

technologies* services, or supplies provided by a hospital, physician, or other provider that is determined to be:

a. medically appropriate for the symptoms and diagnosis or treatment of the work-related illness or injury;

b. provided for the diagnosis or the direct care and treatment of the patient's illness or injury;

c. in accordance with the medical treatment schedule and the provisions of R.S. 23:1203.1; and

d. not primarily for the convenience of the patient, patient's family, practitioner or provider; and

e. the most appropriate level of service that can be provided to the patient.

2. Additional Medical Record Information. It is the responsibility of the claimant and provider to furnish all medical documentation needed by the carrier/self-insured employer to determine if the injury or illness is job related and if the services are medically necessary for the condition of the claimant (e.g., physician office record, hospital medical record, doctor's orders, treatment plan, vital signs, lab data, test results, nurses' notes, progress notes).

*The term *technology* refers to any medical or surgical treatment, medical or surgical device, therapeutic or diagnostic procedure, drug, biological, or therapeutic or diagnostic agent.

AUTHORITY NOTE: Promulgated in accordance with RS 23:1291.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:263 (March 1991), repromulgated LR 17:653 (July 1991), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 38:1036 (April 2012), repromulgated LR 38:1293 (May 2012).

Curt Eysink
Executive Director

1205#025

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Advisory Commission on Pesticides

Restrictions on Applications of Certain Pesticides (LAC 7:XXIII.1103)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3203, the Department of Agriculture and Forestry intends to adopt these rules and regulations (“the proposed action”) to implement a herbicide application program by the Sabine River Authority, State of Louisiana (SRA) to manage the noxious aquatic weed Giant Salvinia in the Toledo Bend Reservoir (Toledo Bend). The proposed action also implements a herbicide application program by the Louisiana Department of Wildlife & Fisheries (LDWF) to manage the noxious aquatic weed Giant Salvinia in Lake Bistineau. Emergency Rules regarding the proposed action were published in the March 20, 2012 Register.

The SRA’s herbicide application program will allow Louisiana property owners whose property adjoins Toledo Bend to apply certain herbicides to control Giant Salvinia in, on and around their property. The SRA, the Louisiana Department of Wildlife and Fisheries, (LDWF), the LSU Agricultural Center (Ag Center), the Toledo Bend Residents Association, and Bass Unlimited have requested the adoption of these Rules. The Rules were adopted in March 2011. The Rules were inadvertently removed by a clerical error when the complete set of rules for the Advisory Commission on Pesticides were re-numbered and published in the Louisiana Register in December 2011. Therefore, these Rules need to be adopted in order to allow spraying and controlling Giant Salvinia during the spring and summer prime growing season.

Giant Salvinia was first discovered on Toledo Bend in 1998 and has proliferated to the point that it threatens the continued productivity and usefulness of the lake itself. This threat is not only to the native plants and animals that live in the lake and the biodiversity of that aquatic life, but also to the continued commercial and recreational use of the lake. The threat to the native aquatic life of Toledo Bend to the continued commercial and recreational use of the lake and to the economy of this state is such that it creates peril to the public health, safety, and welfare of the citizens of this state.

The LDWF’s herbicide application program will allow Louisiana property owners whose property adjoins Lake Bistineau to apply certain herbicides to control Giant Salvinia in, on and around their property. The Lake Bistineau Task Force, the Louisiana Department of Wildlife and Fisheries, (LDWF), the Bienville Parish Police Jury, the Bossier Parish Police Jury, the Webster Parish Police Jury, the Saline Soil and Water Conservation District, the Bodcau Soil and Water Conservation District, the Dorcheat Soil and Water Conservation District and the Trailblazer Resource Conservation and Development Council have requested the

adoption of these Rules at the earliest possible date to begin spraying and controlling Giant Salvinia during the spring and summer prime growing season. Giant Salvinia was recently discovered on Lake Bistineau and has proliferated to the point that it threatens the continued productivity and usefulness of the lake itself.

This threat is not only to the native plants and animals that live in the lake and the biodiversity of that aquatic life, but also to the continued commercial and recreational use of the lake. The threat to the native aquatic life of Lake Bistineau to the continued commercial and recreational use of the lake and to the economy of this state is such that it creates peril to the public health, safety, and welfare of the citizens of this state.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 11. Regulations Governing Application of Pesticides

§1103. Restrictions on Application of Certain Pesticides

A. - I. ...

J. The Commissioner hereby establishes a herbicide application permitting program for the Sabine River Authority, State of Louisiana (SRA) in, on and around the waters of the Louisiana portion of Toledo Bend Reservoir.

1. Any person who applies or uses any herbicide or incorporates the use of any herbicide, for the management, control, eradication or maintenance of Giant Salvinia in, on or around the waters of the Louisiana portion of Toledo Bend Reservoir, shall comply with all of the following requirements, prior to making any applications to Giant Salvinia in SRA waters.

a. Complete the SRA designated Giant Salvinia applicator training program.

b. Apply for and receive a herbicide application permit from the SRA which shall be good for the remainder of the calendar year in which issued, but may be renewed annually by contacting the SRA.

c. Apply, use, or incorporate herbicides to be applied to or used on or for Giant Salvinia only as prescribed by the SRA herbicide application program.

d. Prepare and maintain records of applications by recording accurate information as required on the Toledo Bend application log sheet provided by the SRA.

e. Deliver (mail, hand deliver, e-mail, fax, etc.) to the SRA office at Pendleton Bridge Office, 15091 Texas Highway, Many, LA 71449 a completed copy of each Toledo Bend application log sheet recording the information regarding an application or use of a herbicide on or for Giant Salvinia within 14 days of each application.

f. Keep a completed copy of the application record for a period of three years after application.

g. Make application records available, during normal business hours, to any authorized person with the department, Department of Wildlife and Fisheries (LDWF), or the SRA.

2. Any person making applications to the Louisiana portion of Toledo Bend Reservoir under contract with the LDWF or SRA, authorized LDWF employees and any person conducting a research project on the Louisiana portion of Toledo Bend Reservoir with the LSU Agricultural Center, LDWF or SRA is exempted from the provisions of this Subsection, but are not exempted from any other provisions of this Part, except as may be provided therein.

K. The commissioner hereby establishes a herbicide application permitting program for the LDWF in, on and around the waters of Lake Bistineau.

1. Any person who applies or uses any herbicide or incorporates the use of any herbicide, for the management, control, eradication or maintenance of Giant Salvinia in, on or around the waters of Lake Bistineau, shall comply with all of the following requirements, prior to making any applications to Giant Salvinia in Lake Bistineau waters:

a. Complete the LDWF designated Lake Bistineau spray permit training.

b. Apply for and receive a herbicide application permit from the LDWF which shall be good for the remainder of the calendar year in which issued, but may be renewed annually by contacting the LDWF.

c. Apply, use, or incorporate herbicides to be applied to or used on or for Giant Salvinia only as prescribed by the Lake Bistineau private spray training program.

d. Prepare and maintain records of applications by recording accurate information as required on the Lake Bistineau application log sheet provided by the LDWF.

e. Deliver (mail, hand deliver, e-mail, fax, etc.) to the Saline Soil and Water Conservation District office at P.O. Box 528, 2263 Hall Street, Ringgold, LA 71068 a completed copy of each Lake Bistineau Application Log Sheet recording the information regarding an application or use of a herbicide on or for Giant Salvinia within 14 days of each application.

f. Keep a completed copy of the application record for a period of three years after application.

g. Make application records available, during normal business hours, to any authorized person with the department, or LDWF.

2. Any person making applications to Lake Bistineau under contract with the LDWF, authorized LDWF employees and any person conducting a research project on Lake Bistineau with a Louisiana University or LDWF is exempted from the provisions of this Subsection, but are not exempted from any other provisions of this Part, except as may be provided therein.

L. - O.5.b. ...

Family Impact Statement

It is anticipated that the proposed Rule will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed rule.

Small Business Statement

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed rule. Written submissions are to be directed to David Fields, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on June 11, 2012. No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Restrictions on Applications of Certain Pesticides

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local governmental unit expenditures. The proposed rule change authorizes the implementation of a herbicide application program by the Louisiana Department of Wildlife and Fisheries (LDWF) to manage the noxious aquatic weed Giant Salvinia in the waters of Lake Bistineau and Toledo Bend. The herbicide application programs will allow Louisiana property owners whose property adjoins Lake Bistineau and Toledo Bend to apply certain herbicides to control Giant Salvinia in, on and around their property.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as a result of the proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Persons owning property on Lake Bistineau and Toledo Bend, and recreational and commercial users of the lakes will be directly affected by the proposed rule change. To the extent the property owners on Lake Bistineau and Toledo Bend decide to apply herbicide, there will be an indeterminable cost to those property owners associated with the application. Also, there will likely be an indeterminable economic benefit to those who utilize these waterways for a commercial/recreational purpose.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is not anticipated to have a direct effect on competition or employment.

Dane Morgan
Assistant Commissioner
1205#008

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Civil Service Board of Ethics

Food and Drink Limit (LAC 52:I.1703)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has initiated rulemaking procedures to make amendments to the Rules for the Board of Ethics to bring the rules into compliance with current statutory provisions and Section 1115.1C of the Code of Governmental Ethics.

Title 52 ETHICS

Part I. Board of Ethics

Chapter 17. Code of Governmental Ethics

§1703. Food and Drink Limit

A. In accordance with R.S. 42:1115.1(C), beginning on July 1, 2012, the limit for food, drink or refreshments provided in R.S. 42:1115.1A and B is \$56.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1115.1.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 36:304 (February 2010), amended LR 36:1466 (July 2010), LR 38:

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may direct their comments to Kathleen M. Allen, Louisiana Board of Ethics, P.O. Box 4368, Baton Rouge, LA 70821, telephone (225) 219-5600, until 4:45 p.m. on June 10, 2012.

Kathleen M. Allen
Ethics Administrator

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Food and Drink Limit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated cost to implement the rule, which sets forth the amended monetary limit on the receipt of food and drink by a public servant and public employee, is \$168 in FY 12-13, which accounts for the cost to publish the Notice of Intent and the rule in the State Register. The proposed administrative rule raises the monetary limit on the receipt of food and drink from \$54 to \$56 in FY 13.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed action will affect all public employees and public servants by setting a monetary limit on the receipt of food and drink.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no anticipated effect on competition and employment.

Kristy Gary
Deputy Ethics Administrator
1205#030

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Standard Teaching Authorizations (LAC 28:CXXXI.303, 305, 311, 313, and 315)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §303. Introduction, §305. Professional Level Certificates, §311. World Language Certificate (WLC) PK-12—Valid for Six Years and Renewable with CLUs, §313. Practitioner Licenses, and §315. Standard Certificates for Teachers in Nonpublic Schools. The proposed policy revisions align the certification of school personnel with Act 54 of the 2010 Regular Legislative Session. The proposed revisions will require that teachers meet the standards of effectiveness mandated by Act 54 in order to obtain a higher level certificate or to renew a Level 2, Level 3, or World Language Certificate (WLC). This policy change will also eliminate the Practitioner 4 license since that alternate certification program no longer exists; additionally this policy change will require teachers moving from a nonpublic school to a public/charter school to meet the same standards of effectiveness upon their move to the public/charter school system. During the 2010 Regular Legislative Session new regulations were passed for the evaluation of teachers in all public school systems. This new policy eliminated the LaTAAP program that had been in place since 1994.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel Chapter 3. Teaching Authorizations and Certifications Subchapter A. Standard Teaching Authorizations

Editor's Note: The name of the Division of Student Standards and Assessments has been changed to The Division of Student Standards, Assessments, and Accountability.

§303. Introduction

A. There are eight types of standard teaching authorizations issued by the state of Louisiana:

1. - 4. ...
5. practitioner 1, 2, and 3 licenses;
6. World Language Certificates (WLC);
7. Extended Endorsement License (EEL); and
8. standard certificates for teachers in non-public schools;

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), (15); R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1797 (October 2006), amended LR 37:558 (February 2011), LR 38:

§305. Professional Level Certificates

A. Level 1 is the entry-level professional certificate, valid for three years. The Level 2 and Level 3 certificates are valid for five years.

1. - 1.d.i.(c). ...

B. Level 2 Professional Certificate—valid for five years.

1. - 1.a. ...

b. successfully meet the standards of effectiveness for three years pursuant to Bulletin 130 and mandated by Act 54 of the Louisiana 2010 Legislative Session; and

B.1.c. - B.3. ...

C. Level 3 Professional Certificate—valid for five years.

1. - 3. ...

D. Renewal/Extension Guidelines for Level 1, Level 2, and Level 3 Certificates

1. Level 1 Certificate

a. Valid for three years initially and may be extended thereafter for a period of one year at the request of a Louisiana Employing Authority. Level 1 certificates are limited to two such extensions. Candidates must successfully meet the standards of effectiveness for the renewal of this certificate pursuant to Bulletin 130 and mandated by Act 54 of the Louisiana 2010 Legislative Session.

2. Level 2 and Level 3 Certificates

a. Valid for five years initially and may be renewed thereafter for a period of five years at the request of a Louisiana Employing Authority. For renewal of Level 2 and Level 3 certificates, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and mandated by Act 54 of the Louisiana 2010 Legislative Session.

E. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1797 (October 2006), amended LR 33:433 (March 2007), LR 34:233 (February 2008), LR 34:1611 (August 2008), LR 35:222 (February 2009), LR 37:558 (February 2011), and LR 38:

§311. World Language Certificate (WLC) PK-12

A. This certificate is valid for six years and may be issued to a foreign associate teacher who participates in the Department of Education (LDE) Foreign Associate Teacher Program, and who teaches world language and/or immersion in grades PK-12.

B. - C.4. ...

D. Renewal Guidelines. Valid for six years initially and may be renewed thereafter for a period of six years at the request of a Louisiana Employing Authority. For renewal of a WLC certificate, candidates must successfully meet the standards of effectiveness for at least three years during the six-year initial or renewal period pursuant to Bulletin 130 and mandated by Act 54 of the Louisiana 2010 Legislative Session.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1800 (October 2006), amended LR 33:1618 (August 2007), LR 34:233 (February 2008), LR 35:642 (April 2009), LR 36:486 (March 2010), LR 38:

§313. Practitioner Licenses

A. Practitioner Licenses 1 and 2 may be issued for one school year, renewed annually, and held a maximum of three years while the holder completes an alternate program. Upon completion of the three years of employment on this certificate, the holder must fulfill guidelines for a Level 1 or higher-level certificate for continued employment in a Louisiana school system. The Practitioner License 3 may be issued for one school year, renewed annually, and held a maximum of four years while the holder completes an alternate program. Upon completion of the four years of employment on this certificate, the holder must fulfill guidelines for a Level 1 or higher-level certificate for continued employment in a Louisiana school system.

B. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1800 (October 2006), amended LR 35:221 (February 2009), LR 38:

§315. Standard Certificates for Teachers in Nonpublic Schools

A. A standard certificate with an asterisk (*) following the certificate type is issued to a teacher in a non-public school. The asterisk (*) refers to a statement printed at the bottom of the certificate: "If this teacher enters a public/charter school system in Louisiana, he/she will be required to meet the standards of effectiveness pursuant to Bulletin 130 and mandated by Act 54 of the Louisiana 2010 Legislative Session for issuance of a Level 2 or Level 3 teaching certificate."

B. - C.4.b. ...

c. If the holder of an expired Level 2* or Level 3* certificate has not earned the required 150 CLUs of professional development, the expired certificate may be reactivated upon request of the employing authority (at the level that was attained prior to expiration) for a period of one year, during which time the certificate holder must present evidence of successful completion of the required 150 CLUs to the Louisiana Department of Education. Failure to complete necessary CLUs during the one year reactivation period will result in an expired certificate that cannot be reinstated until evidence is provided of completed professional development requirements.

C.4.d. - F.1. ...

2. If the holder of an expired Level 2* or Level 3* certificate has not earned the required 150 CLUs of professional development, the expired certificate may be reactivated upon request of the Louisiana employing authority (at the level that was attained prior to expiration) for a period of one year, during which time the certificate holder must present evidence of successful completion of the required 150 CLUs to the Louisiana Department of Education. Failure to complete necessary CLUs during the one year reactivation period will result in an expired

certificate that cannot be reinstated until evidence is provided of completed professional development requirements.

3. A Continuing Learning Unit (CLU) is a professional development activity that builds capacity for effective, research-based, content-focused teaching and learning that positively impacts student achievement. As a unit of measure, the CLU is used to quantify an educator's participation in a district- or system-approved, content-focused professional development activity aligned with the educator's individual professional growth plan.

a. Educators may earn one CLU for each clock hour of active engagement in a high quality professional development activity approved by the employing authority. Each educator is responsible for maintaining required documentation and for reporting earned CLUs in a manner prescribed by the employing authority. Earned CLUs transfer across Local Education Agencies (LEAs).

b. An educator who holds a Level 2* or Level 3* professional license is responsible for maintaining documentation regarding acquisition of 150 CLUs for purposes of renewal and for completing the necessary paperwork every five years to renew his/her license. Upon submission of the renewal application to the State, the employing authority must provide an assurance statement signed by the superintendent or his/her designee, with the required listing of earned CLUs as documented by the educator seeking licensure.

G. Reinstating Lapsed Levels 2* or 3*, Types B* or A* Certificates

1. If the holder of a Level 2*, Level 3*, Type B*, or Type A* certificate allows a period of five consecutive calendar years to pass in which he/she is not a regularly employed teacher for at least one semester, or 90 consecutive days, the certificate will lapse for disuse.

2. To reinstate a lapsed certificate, the holder must present evidence that he/she earned six semester hours of credit in state-approved courses (see Chapter 13) during the five year period immediately preceding request for reinstatement.

3. If the holder did not earn six semester hours or equivalent, the lapsed certificate may be reactivated upon request (at the level that was attained prior to disuse) for a period of one year, during which time the holder must complete reinstatement requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1801 (October 2006), amended LR 36:752 (April 2010), LR 37:559 (February 2011), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., June 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Bulletin 746—Louisiana Standards for State Certification of School Personnel Standard Teaching Authorizations**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revisions align the certification of school personnel with Act 54 of the 2010 Regular Legislative Session. The proposed revisions will require that teachers meet the standards of effectiveness mandated by Act 54 in order to obtain a higher level certificate or to renew a Level 2, Level 3, or World Language Certificate (WLC). This policy change will also eliminate the Practitioner 4 license since that alternate certification program no longer exists; additionally this policy change will require teachers moving from a nonpublic school to a public school to meet the same standards of effectiveness upon their move to the public school system. Local school districts may incur additional costs related to professional development and/or intensive assistance programs for teachers and/or administrators based upon their individual needs. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This policy will have no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This policy will require that data from performance evaluations be used to make employment decisions for public school teachers and administrators.

Beth Scioneaux
Deputy Superintendent
1205#038

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Dentistry**

Anesthesia/Analgesia Administration and
Continuing Education Requirements
(LAC 46:XXXIII.1505, 1507, 1509, and 1611)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.1505, 1507, 1509, and 1611.

The Louisiana State Board of Dentistry is amending this Rule to specify that personally attended training is required for dentists in order to receive and renew anesthesia permits. Further, to clarify those third parties who can administer sedation in a dental setting.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Profession

Chapter 15. Anesthesia/Analgesia Administration

§1505. Conscious Sedation with Parenteral Drugs

A. - A.2. ...

B. In order to receive a permit the dentist must show and produce evidence that he/she complies with the following provisions:

1. successful completion of a personally attended advanced training program beyond the pre-doctoral dental school level accredited by the Commission on Dental Accreditation of the American Dental Association which includes anesthesiology and related academic subjects as required in §1505 of this Chapter; or

2. utilization of the services of a third party medical doctor, or doctor of osteopathy specializing in anesthesiology, certified registered nurse anesthetist, or an oral and maxillofacial surgeon permitted by the board to administer conscious and unconscious sedation provided that those third party anesthetists must remain on the premises of the dental facility until any patient given parenteral drugs is sufficiently recovered; or

3. successful completion of a board-approved personally attended continuing education course as described in Part III of the American Dental Association Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry provided the applicant has held a license to practice dentistry for a minimum of three years. The board has determined that 80 hours of clinical airway management would be a minimum to achieve competency as described in Part III of the previously mentioned guidelines.

C. In addition to the requirements of Subsection B of this Section the dentist must provide proof of current certification in cardiopulmonary resuscitation, course "Advanced Cardiac Life Support" (ACLS) as defined by the American Heart Association, or its equivalent. The board will only accept an ACLS course which includes a practical component which is personally attended.

D. Provide proof of current certification in pediatric advanced life support (PALS) when administering sedation to patients under the age of 13. The board will only accept a PALS course which includes a practical component which is personally attended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 22:1216 (December 1996), LR 33:2653 (December 2007), LR 38:

§1507. General Anesthesia/Deep Sedation

A. - A.1. ...

2. in order to receive a permit the dentist must show and produce evidence that he complies with the following provisions:

a. successful completion of an oral and maxillofacial surgery training program accredited by the Commission on Dental Accreditation of the American Dental Association which includes anesthesiology and related academic subjects as required in §1509 of this Chapter; or successful completion of a personally attended program which complies with Part II of the American Dental Association Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dental Education at the advanced level;

b. - c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 32:2057 (November 2006), LR 33:2653 (December 2007), LR 38:

**§1509. Minimal Educational Requirements for the
Granting of Permits to Administer Nitrous
Oxide Inhalation Analgesia, Conscious Sedation
with Parenteral Drugs and General
Anesthesia/Deep Sedation**

A. - A.3. ...

B. Conscious Sedation with Parenteral Drugs

1. To be granted a conscious sedation with parenteral drugs permit, the applicant's training must be personally attended. Online or correspondence courses are not acceptable.

2. To be granted a "limited" permit, the applicant must submit verification of successful completion of formal post-doctoral training in the use of parenteral drugs via the intramuscular (IM), submucosal (SM), intranasal (IN), and subcutaneous (SC) routes of administration and competency to handle all emergencies relating to parenteral sedation providing such program consists of a minimum of 60 hours of instruction and 100 hours of clinical experience which includes at least 10 documented cases of parenteral sedation.

3. To be granted a "full" permit, the applicant must submit verification of successful completion of formal post-doctoral training in the use of parental drugs via the

intramuscular (IM), submucosal (SM), intranasal (IN), subcutaneous (SC), and conscious IV sedation routes of administration and competency to handle all emergencies relating to parenteral sedation providing such program consists of a minimum of 60 hours of instruction and 100 hours of clinical experience which includes at least 20 documented cases of parenteral sedation.

C. ...

1. To be granted a conscious sedation with enteral drugs permit, the applicant's training must be personally attended. Online or correspondence courses are not acceptable.

2. To be granted an unrestricted (adults and children) permit to administer conscious sedation with enteral drugs, the applicant must submit verification of successful completion of formal post-doctoral training in the use of enteral conscious sedation on both pediatric and adult patients or satisfactory completion of a board approved course which includes a minimum of 16 hours of didactic training and a component on handling emergencies incident to the administration of conscious sedation.

3. To be granted a restricted permit (adults only) to administer conscious sedation with enteral drugs, the applicant must submit verification of successful completion of formal post-doctoral training in the use of enteral conscious sedation on adult patients or satisfactory completion of a board approved course which includes a minimum of 8 hours of didactic training and a component on handling emergencies incident to the administration of conscious sedation.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 22:1216 (December 1996), LR 32:244 (February 2006), LR 37:590 (February 2011), LR 37:2151 (July 2011), LR 38:

Chapter 16. Continuing Education Requirements

§1611. Continuing Education Requirements for Relicensure of Dentists

A. - J.1. ...

2. For the renewal of enteral conscious sedation, parenteral conscious sedation, deep sedation or general anesthesia permits, the licensee must personally attend the appropriate continuing education course. Online or correspondence courses for the renewal of enteral conscious sedation, parenteral conscious sedation, deep sedation or general anesthesia permits will not be accepted.

K. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 24:1117 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:244 (February 2006), LR 35:1237 (July 2009), LR 36:2038 (September 2010), LR

37:2151 (July 2011), LR 37:3515 (December 2011), repromulgated LR 38:356 (February 2012), LR 38:817 (March 2012), LR 38:

Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

Public Comments

Interested persons may submit written comments on these proposed Rule changes to Peyton B. Burkhalter, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 20 days of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of publication of this notice.

Peyton B. Burkhalter
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Anesthesia/Analgesia Administration and Continuing Education Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be a one-time cost of \$500 in FY 12 for publication of the proposed rules in the State Register. There are no estimated costs or savings to local governmental units from the proposed rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by the board.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The Louisiana State Board of Dentistry's current sedation training programs and continuing education requirements have a practical component, and licensees are already required to secure training and continuing education. Since these courses are all offered in-state, the rule changes will not have any significant economic impact on the licensees and/or the licensees will not incur additional travel costs by requiring personal attendance. In addition, under section 1505(B), dentists who could previously serve as third party administrators of conscious sedation with parenteral drugs after completion of the necessary program requirements set by the American Dental Association will no longer be allowed to do so. As such, these dentists may lose some revenue depending on their associated fees.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Dentists who could previously serve as third party administrators of conscious sedation with parenteral drugs after completion of the necessary program requirements set by the American Dental Association will no longer be allowed to do so.

Peyton B. Burkhalter
Executive Director
1205#078

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Dentistry

Examination of Dentists (LAC 46:XXXIII.1709 and 1711)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.1709 and 1711. No preamble has been prepared.

The Louisiana State Board of Dentistry made grammatical changes and reorganized the Rule. In addition, the Louisiana State Board of Dentistry changed the maximum number of times an applicant can fail any clinical licensing examination and be considered for licensure.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 17. Licensure Examinations

§1709. Examination of Dentists

A. - B.4. ...

C. To be licensed as a dentist in this state, an applicant for initial licensure must successfully complete the following:

1. a written examination on the jurisprudence and ethics of the state regulating the practice of dentistry; and

2. the clinical examination administered by the Louisiana State Board of Dentistry approved testing agency. This agency will be named by the board and this relationship may be changed or amended as deemed necessary by the board.

D. Effective January 1, 2012 the clinical licensing examinations administered by Central Regional Dental Testing Service (CRDTS), Northeast Regional Board (NERB), Southern Regional Testing Agency (SRTA), American Dental Exam (ADEX), and Western Regional Examining Board (WREB), will not be accepted by the Louisiana State Board of Dentistry for initial licensure. However, applicants who have taken those examinations prior to the examination cycle of calendar year 2011 shall have three years from the date of their successful completion of those examinations to apply for a license via examination in the state of Louisiana. After the three year deadline it will be necessary for those applicants to apply for a licensure by credentials in the state of Louisiana.

E. The board is expressly authorized to utilize the services of other licensed dentists to facilitate the examination.

F. ...

G. Notwithstanding any other law to the contrary or any examination manual of any of the testing agencies listed in Subsection C of this Section, no candidate for licensure in the state of Louisiana will be granted same if said candidate has failed any clinical licensing examination for a total of three times. This number includes the accumulation of all examinations taken regardless of the testing agency. A make-up examination counts as an examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:2513 (December 2002), LR 33:2654 (December 2007), LR 37:1407 (May 2011), LR 37:2151 (July 2011), LR 37:3516 (December 2011), repromulgated LR 38:356 (February 2012), amended LR 38:

§1711. Examination of Dental Hygienists

A. - B.4. ...

C. To be licensed as a dental hygienist in this state, an applicant must successfully complete the following:

1. a written examination on the jurisprudence and ethics of the state regulating the practice of dental hygiene; and

2. the clinical examination administered by the Louisiana State Board of Dentistry approved testing agency. This agency will be named by the board and this relationship may be changed or amended as deemed necessary by the board.

D. Effective January 1, 2012 the clinical licensing examinations administered Central Regional Dental Testing Service (CRDTS), Northeast Regional Board (NERB), Southern Regional Testing Agency (SRTA), American Dental Exam (ADEX), and Western Regional Examining Board (WREB), will not be accepted by the Louisiana State Board of Dentistry for initial licensure. However, applicants who have taken those examinations prior to the examination cycle of calendar year 2011 shall have three years from the date of their successful completion of those examinations to apply for a license via examination in the state of Louisiana. After the three year deadline it will necessary for those applicants to apply for a licensure by credentials in the state of Louisiana.

E. No clinical licensing examination may be conducted in the state of Louisiana without the written permission from the Louisiana State Board of Dentistry. For permission to be granted, the agency conducting the examination must have at least four current members of the Louisiana State Board of Dentistry participating in the clinical licensing examination.

F. Notwithstanding any other law to the contrary or any examination manual of any of the testing agencies, no candidate for licensure in the state of Louisiana will be granted same if said candidate has failed any clinical licensing examination for a total of three times. This number includes the accumulation of all examinations taken regardless of the testing agency. A make-up examination counts as an examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:1779 (August 2002), LR 33:2654 (December 2007), LR 37:1407 (May 2011), LR 37:2151 (July 2011), LR 37:3516 (December 2011), repromulgated LR 38:356 (February 2012), amended LR 38:

Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

Public Comments

Interested persons may submit written comments on these proposed rule changes to Peyton B. Burkhalter, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA

70130. Written comments must be submitted to and received by the board within 20 days of the publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of publication of this notice.

Peyton B. Burkhalter
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Examination of Dentists**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be a one-time cost of \$500 in FY 12 for publication of the proposed rules in the State Register. There are no estimated costs or savings to local governmental units from the proposed rules. The rule amendments codify the requirement under R.S. 37:761 that all dentists and hygienists take a written examination administered by the Board on the jurisprudence and ethics of the state regulating the practice of dentistry. There will be no increased costs as the examination is already administered under current statute.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by the board.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The rule changes will have no costs or economic benefits on dentists or dental hygienists.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Under the proposed rule amendments, if a dental or dental hygienist applicant fails the clinical licensing examination three times, they will no longer qualify for licensure. This will limit the employment of those dentists and hygienists who previously passed the examination on the fourth time and qualified for licensure.

Peyton B. Burkhalter
Executive Director
1205#077

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Dentistry**

Patients' Records (LAC 46:XXXIII.318)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.318. No preamble has been prepared.

The Louisiana State Board of Dentistry made grammatical changes to the Rule and title. In addition, the Rule is being clarified to set forth the number of days within which a

dentist has to produce records of a patient and where the patient records are maintained.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Profession

Chapter 3. Dentists

§318. Patients' Records

A. Upon written request from the patient or the patient's legal representative, each dentist shall furnish a copy of any of the patient's dental records maintained by the dentist within 15 days, from the receipt of the request.

B.1. - C.3.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760(8) and R.S. 40:1299.96.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1114 (June 1998), amended LR 28:1777 (August 2002), LR 38:

Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

Public Comments

Interested persons may submit written comments on these proposed Rule changes to Peyton B. Burkhalter, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 20 days of publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of publication of this notice.

Peyton B. Burkhalter
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Patients' Records**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be a one-time cost of \$500 in FY 12 for publication of the proposed rules in the State Register. There are no estimated costs or savings to local governmental units from the proposed rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by the board.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The rule changes will have no economic costs or benefits on dentists or patients.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Peyton B. Burkhalter
Executive Director
1205#079

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Ambulatory Surgical Centers
Reimbursement Methodology—Never Events
(LAC 50:XI.7501)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:IX.7501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Section 2702 of the Patient Protection and Affordable Care Act (ACA) of 2010 directed the Secretary of the U.S. Department of Health and Human Services (DHHS) to establish Medicaid regulations which prohibit federal payments to states for any amounts expended for providing medical assistance for healthcare-acquired conditions and never events. In June 2011, the DHHS, Centers for Medicare and Medicaid Services (CMS) implemented the requirements of §2702.

In compliance with §2702 of ACA, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ambulatory surgical centers to prohibit Medicaid reimbursement for erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental to the health and safety of the patient (*Louisiana Register*, Volume 38, Number 5). This includes procedures and events that should never happen in a medical setting, commonly known as “never events”. This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 11. Ambulatory Surgical Centers

Chapter 75. Reimbursement

§7501. General Provisions

A. - B. ...

C. Never Events. Effective for dates of service on or after July 1, 2012, the Medicaid Program will not provide reimbursement to ambulatory surgical centers for “never events” or medical procedures performed in error which are preventable and have a serious, adverse impact to the health of the Medicaid recipient. Reimbursement will not be provided when the following “never events” occur:

1. the wrong surgical procedure is performed on a patient;
2. surgical or invasive procedures are performed on the wrong body part; or
3. surgical or invasive procedures are performed on the wrong patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1888 (September 2009), amended LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by encouraging providers to apply the best medical practices to ensure that families receive better healthcare outcomes.

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, June 27, 2012 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views, or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Ambulatory Surgical Centers—Reimbursement Methodology—Never Events

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The department has not historically tracked payments for these events; however, to the extent that such payments were made, this rule would result in programmatic savings to the state by an indeterminable amount. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 11-12 for the state’s administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$164 will be collected in FY 11-12 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule, which continues the provisions of the July 1, 2012 emergency rule, amends the provisions governing the reimbursement methodology for ambulatory surgical centers to prohibit Medicaid reimbursement for erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental to the health and safety of the patient. This includes procedures and events that should never happen in a medical setting, commonly known as “never

events". It is anticipated that implementation of this proposed rule may cause a reduction in payments to providers by an indeterminable amount for FY 11-12, FY 12-13, and FY 13-14 should these events no longer be reimbursed by the Medicaid Program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1205#053

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Facility Need Review
Outpatient Abortion Facilities
(LAC 48:I.12501, 12503 and 12524)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.12501 and §12503 and to adopt §12524 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2116. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the inclusion of adult day health care providers in the Facility Need Review (FNR) Program (*Louisiana Register*, Volume 36, Number 2). The department promulgated an Emergency Rule which amended the provisions governing the facility need review process to adopt provisions governing the inclusion of licensed hospice providers and inpatient hospice providers in the FNR Program (*Louisiana Register*, Volume 38, Number 3). The department now proposes to amend the provisions governing the facility need review process to adopt provisions governing the inclusion of outpatient abortion facilities in the FNR Program.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12501. Definitions

A. ...

Outpatient Abortion Facility—any outpatient facility licensed by the Department of Health and Hospitals pursuant to R.S. 40:2175.1 et seq., or its successor licensing statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of

Health Services Financing, LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:

§12503. General Information

A. - C.1. ...

2. home and community-based service providers, as defined under this Chapter;

3. adult day health care providers;

4. hospice providers or inpatient hospice facilities; and

5. outpatient abortion facilities.

D. - F.4. ...

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers, ICFs-DD, ADHC providers, hospice providers, and outpatient abortion facilities that meet one of the following conditions:

1. ...

2. existing licensed ICFs-DD that are converting to the proposed residential options waiver;

3. ADHC providers who were licensed as of December 31, 2009 or who had a completed initial licensing application submitted to the department by December 31, 2009, or who are enrolled or will enroll in the Louisiana Medicaid Program solely as a program for all-inclusive care for the elderly provider;

4. hospice providers that were licensed, or had a completed initial licensing application submitted to the department, by March 20, 2012; or

5. outpatient abortion facilities which were licensed by the department on or before May 20, 2012.

H. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:

Subchapter B. Determination of Bed, Unit, Facility or Agency Need

§12524. Outpatient Abortion Facilities

A. No outpatient abortion facility shall be licensed to operate unless the FNR Program has granted an approval for the issuance of an outpatient abortion facility license. Once the FNR Program approval is granted, an outpatient abortion facility is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.

B. The service area for proposed or existing outpatient abortion facilities is the DHH region where the facility is or will be licensed.

C. Determination of Need/Approval

1. The department will review the application to determine if there is a need for an additional outpatient abortion facility in the DHH region.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application and other evidence effectively establishes the probability of serious, adverse consequences to individuals' ability to access outpatient abortion facility services if the facility is not allowed to be licensed.

3. In reviewing the application, the department may consider, but is not limited to, evidence showing:

a. the number of other licensed outpatient abortion facilities in the DHH Region; and

b. individuals' inability to access outpatient abortion clinic services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to individuals' ability to access outpatient abortion clinic services if the facility is not allowed to be licensed. The department shall not grant any FNR approvals if the applicant fails to provide such data and evidence.

D. Applications for approvals of outpatient abortion facilities submitted under these provisions are bound to the description in the application with regard to the type of services proposed as well as to the site and location as defined in the application. FNR approval of facilities shall expire if these aspects of the application are altered or changed.

E. FNR approvals for outpatient abortion facilities are non-transferrable and are limited to the location and the name of the original licensee.

1. An outpatient abortion facility undergoing a change of location within the same DHH region in which it is licensed shall submit a written attestation of the change of location and the department shall re-issue the FNR approval with the name and new location. An outpatient abortion facility undergoing a change of location outside of the DHH Region in which it is currently licensed shall submit a new FNR application and fee and undergo the FNR approval process.

2. An outpatient abortion facility undergoing a change of ownership shall submit a new FNR application to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which must show the seller's or transferor's intent to relinquish the FNR approval.

3. FNR approval of a licensed provider shall automatically expire if the provider is moved or transferred to another party, entity or location without application to and approval by the FNR program.

F. Outpatient abortion facilities shall have six months from the date of FNR approval to obtain final architectural plan approval and shall have one year from the date of FNR approval within which to become licensed. A one-time 90 day extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant. Inappropriate zoning is not a basis for extension. Failure to meet the timeframes in this Section shall result in an automatic expiration of the FNR approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed

Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, June 27, 2012 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Facility Need Review—Outpatient Abortion Facilities

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$656 (SGF) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule may increase revenue collections to the Department as a result of the collection of facility need review (FNR) application fees; however, there is no way to determine how many providers may apply for licensing and undergo the FNR process so the anticipated revenue collections are indeterminable.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to amend the provisions governing the facility need review process to include licensed outpatient abortion facilities in the FNR Program. It is anticipated that implementation of this proposed rule will have economic costs for outpatient abortion clinics who seek licensure based on the existing facility need review application fee of \$200; however, the cost is indeterminable since there is no way to establish how many outpatient abortion clinics will apply for licensing and undergo the FNR process.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1205#054

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Healthcare-Acquired and Provider Preventable Conditions
(LAC 50:V.109)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.109 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Section 2702 of the Patient Protection and Affordable Care Act (ACA) of 2010 directed the secretary of the U.S. Department of Health and Human Services (DHHS) to establish Medicaid regulations which prohibit federal payments to states for any amounts expended for providing medical assistance for healthcare-acquired conditions and never events. In June 2011, the DHHS, Centers for Medicare and Medicaid Services (CMS) implemented the requirements of §2702.

In compliance with §2702 of ACA, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to prohibit Medicaid reimbursement for erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental to the health and safety of the patient (*Louisiana Register*; Volume 38, Number 5). This includes procedures and events that should never happen in a medical setting, commonly known as “never events”. This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 1. General Provisions

§109. Healthcare-Acquired and Provider Preventable Conditions

A. Effective for dates of service on or after July 1, 2012, the Medicaid Program will not provide reimbursement for healthcare-acquired or provider preventable conditions which result in medical procedures performed in error and have a serious, adverse impact to the health of the Medicaid recipient.

B. Reimbursement shall not be provided for the following healthcare-acquired conditions (for any inpatient hospital settings participating in the Medicaid Program) including:

1. foreign object retained after surgery;
2. air embolism;
3. blood incompatibility;
4. stage III and IV pressure ulcers;
5. falls and trauma, including:
 - a. fractures;
 - b. dislocations;
 - c. intracranial injuries;
 - d. crushing injuries;

- e. burns; or
- f. electric shock;
6. catheter-associated urinary tract infection (UTI);
7. vascular catheter-associated infection;
8. manifestations of poor glycemic control, including:
 - a. iabetic ketoacidosis;
 - b. nonketotic hyperosmolar coma;
 - c. hypoglycemic coma;
 - d. secondary diabetes with ketoacidosis; or
 - e. secondary diabetes with hyperosmolarity;
9. surgical site infection following:
 - a. coronary artery bypass graft (CABG)-mediastinitis;
 - b. bariatric surgery, including:
 - i. laparoscopic gastric bypass;
 - ii. gastroenterostomy; or
 - iii. laparoscopic gastric restrictive surgery; or
 - c. orthopedic procedures, including:
 - i. spine;
 - ii. neck;
 - iii. shoulder; or
 - iv. elbow; or
10. deep vein thrombosis (DVT)/pulmonary embolism (PE) following total knee replacement or hip replacement with pediatric and obstetric exceptions.

C. Reimbursement shall not be provided for the following provider preventable conditions, (for any inpatient hospital settings participating in the Medicaid Program) including:

1. wrong surgical or other invasive procedure performed on a patient;
2. surgical or other invasive procedure performed on the wrong body part; or
3. surgical or other invasive procedure performed on the wrong patient.

D. For discharges on or after July 1, 2012, all hospitals are required to bill the appropriate present-on-admission (POA) indicator for each diagnosis code billed. All claims with a POA indicator with a health care-acquired condition code will be denied payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by encouraging providers to apply the best medical practices to ensure that families receive better healthcare outcomes.

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, June 27, 2012 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Inpatient Hospital Services—Healthcare-Acquired and Provider Preventable Conditions**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The department has not historically tracked payments for these events; however, to the extent that such payments were made, this rule would result in programmatic savings to the state by an indeterminable amount. It is anticipated that \$492 (\$246 SGF and \$246 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$246 will be collected in FY 11-12 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the July 1, 2012 Emergency Rule which amends the provisions for inpatient hospital services to prohibit Medicaid reimbursement for healthcare-acquired and provider preventable conditions for erroneous medical procedures that result in serious adverse conditions that are detrimental to the health and safety of the patient. This includes procedures and events that should never happen in a medical setting, commonly known as "never events". It is anticipated that implementation of this proposed rule may cause a reduction in payments to inpatient hospitals by an indeterminable amount for FY 11-12, FY 12-13, and FY 13-14 should these events no longer be reimbursed by the Medicaid Program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1205#055

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services—Never Events (LAC 50:V.5113)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.5113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Section 2702 of the Patient Protection and Affordable Care Act (ACA) of 2010 directed the Secretary of the U.S. Department of Health and Human Services (DHHS) to establish Medicaid regulations which prohibit federal payments to states for any amounts expended for providing medical assistance for healthcare-acquired conditions and never events. In June 2011, the DHHS, Centers for Medicare and Medicaid Services (CMS) implemented the requirements of §2702.

In compliance with §2702 of ACA, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to prohibit Medicaid reimbursement for erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental to the health and safety of the patient (*Louisiana Register*, Volume 38, Number 5). This includes procedures and events that should never happen in a medical setting, commonly known as "never events". This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 51. General Provisions

§5113. Never Events

A. Effective for dates of service on or after July 1, 2012, the Medicaid Program will not provide reimbursement for outpatient hospital services for "never events" or medical procedures performed in error which are preventable and have a serious, adverse impact to the health of the Medicaid recipient. Reimbursement will not be provided when the following "never events" occur:

1. the wrong surgical procedure is performed on a patient;
2. surgical or invasive procedures are performed on the wrong body part; or
3. surgical or invasive procedures are performed on the wrong patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by encouraging providers to apply the best medical practices to ensure that families receive better healthcare outcomes.

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, June 27, 2012 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Outpatient Hospital Services—Never Events

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The department has not historically tracked payments for these events; however, to the extent that such payments were made, this rule would result in programmatic savings to the state by an indeterminable amount. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$164 will be collected in FY 11-12 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the July 1, 2012 Emergency Rule which adopted provisions for outpatient hospital services to prohibit Medicaid reimbursement for the performance of erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental

to the health and safety of the patient. This includes procedures and events that should never happen in a medical setting, commonly known as "never events". It is anticipated that implementation of this proposed rule may cause a reduction in payments to outpatient hospitals by an indeterminable amount for FY 11-12, FY 12-13, and FY 13-14 should these events no longer be reimbursed by the Medicaid Program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1205#056

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program
Reimbursement Methodology—Never Events
(LAC 50:IX.15107)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Section 2702 of the Patient Protection and Affordable Care Act (ACA) of 2010 directed the Secretary of the U.S. Department of Health and Human Services (DHHS) to establish Medicaid regulations which prohibit federal payments to states for any amounts expended for providing medical assistance for healthcare-acquired conditions and never events. In June 2011, the DHHS, Centers for Medicare and Medicaid Services (CMS) implemented the requirements of §2702.

In compliance with §2702 of ACA, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Professional Services Program to prohibit Medicaid reimbursement for erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental to the health and safety of the patient (*Louisiana Register*, Volume 38, Number 5). This includes procedures and events that should never happen in a medical setting, commonly known as "never events". This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter A. General Provisions

§15107. Never Events

A. Effective for dates of service on or after July 1, 2012, the Medicaid Program will not provide reimbursement to providers in the Professional Services Program for "never events" or medical procedures performed in error which are

preventable and have a serious, adverse impact to the health of the Medicaid recipient. Reimbursement will not be provided when the following “never events” occur:

1. the wrong surgical procedure is performed on a patient;
2. surgical or invasive procedures are performed on the wrong body part; or
3. surgical or invasive procedures are performed on the wrong patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by encouraging providers to apply the best medical practices to ensure that families receive better healthcare outcomes.

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, if it is determined that submission to CMS for review and approval is required.

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, June 27, 2012 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Professional Services Program Reimbursement Methodology—Never Events

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 11-12 for the state’s administrative expense for promulgation of this proposed rule and final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$164 will be collected in FY 11-12 for the federal share of

the expense for promulgation of this proposed rule and the final rule.

- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This proposed Rule amends the provisions governing the reimbursement methodology for the Professional Services Program to prohibit Medicaid reimbursement to any professional services providers for the performance of erroneous medical procedures that result in preventable and serious adverse conditions that are detrimental to the health and safety of the patient. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons for FY 11-12, FY 12-13, and FY 13-14.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1205#057

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Licensed Professional Counselors Board of Examiners

License of Title for Marriage and Family
Requirements for Licensure
(LAC 46: LX. 3309, 3311, 3315, 3317, 3319, and 3321)

In accordance with R.S. 49:950 et seq., of the Louisiana Administrative Procedures Act, as well as R.S. 37:1101 and 37: 1122, the Louisiana Licensed Professional Counselors Board of Examiners has adopted rules and amended its existing rules and regulations, by revising LAC 46:LX.Chapter 33. These revisions and additions are, in part, necessary to correct previously promulgated rules needed to implement Act 613 of the 2010 Regular Session of the Louisiana Legislature. Additionally, new rules are needed for the Board to adequately regulate the supervision of MFT Interns. Specifically, the Licensed Professional Counselors Board of Examiners has amended Sections 3309, 3311, and 3315 and added Sections 3317, 3319, and 3321.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LX. Licensed Professional Counselors Board of Examiners

Subpart 2. Professional Standards for Licensed Marriage and Family Therapists

Chapter 33. Requirements for Licensure §3309. Academic Requirements for MFT Licensure [Formerly §3311]

A. The board upon recommendation of the advisory committee shall register a person for MFT internship who applies on the required application forms, completed as the board prescribes and accompanied by the required fee. Additionally, applicants must meet one of the four following academic options:

1. ...
2. a master’s or doctoral degree in marriage and family therapy or marriage and family counseling from a

program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) in a regionally accredited educational institution with a minimum of six courses in marriage and family therapy, including coursework on the AAMFT Code of Ethics. The degree must include:

a. a minimum of 500 supervised direct client contact hours, with a minimum of 250 of these 500 hours with couples and/or families;

b. a minimum of 100 hours of face to face supervision. The training of the supervisor shall be substantially equivalent to that of an AAMFT approved supervisor as determined by the advisory committee;

3. a master's or doctoral degree in marriage and family therapy or a related clinical mental health field from a regionally accredited institution of higher education or a certificate from a postgraduate training institute in marriage and family therapy. The qualifying degree or certificate program must include coursework, practicum, and internship in marriage and family therapy that is determined by the advisory committee to be substantially equivalent to a graduate degree or post-graduate certificate in marriage and family therapy from a program accredited by COAMFTE. To be considered substantially equivalent, qualifying degrees or post graduate certificates must include:

a. a minimum of 60 semester hours of coursework;

b. a minimum of 500 supervised direct client contact hours, with a minimum of 250 hours of these 500 hours with couples and/or families;

c. a minimum of 100 hours of face-to-face supervision. The training of the supervisor shall be substantially equivalent to that of an AAMFT approved supervisor as determined by the advisory committee;

4. a master's degree or a doctoral degree in marriage and family therapy from a regionally accredited institution of higher education whose program and curriculum was approved by the board through the advisory committee at anytime prior to July 1, 2010. The master's or doctoral degree for this option must include:

a. a minimum of 500 supervised direct client contact hours, with a minimum of 250 hours of these 500 hours with couples and/or families;

b. a minimum of 100 hours of face-to-face supervision. The training of the supervisor must be substantially equivalent to that of an AAMFT approved supervisor as determined by the advisory committee.

B. Required coursework in marriage and family therapy for academic options 2 and 3 may be completed during the qualifying master's or doctoral degree programs or may be taken as post-graduate work at a regionally accredited college, university, or qualifying postgraduate marriage and family therapy training institute as determined by the advisory committee.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:156 (February 2003), amended LR 29:2785 (December 2003), LR 35:1113 (June 2009), LR 37:1602 (June 2011), repromulgated LR 37:2163 (July 2011), amended LR 38:

§3311. Coursework and Academic Supervision Requirements, for Academic Options 2, 3, and 4

A. - A7. ...

8. The applicant must document that all required graduate and postgraduate coursework was presented from a family systems perspective. Coursework will specify how marriage and family therapists apply psychotherapeutic and family systems theories and techniques in the delivery of professional psychotherapeutic services to individuals, couples, families, and groups for the purpose of assessment, treatment planning, and treatment of mental, intellectual, emotional, or behavioral disorders and apply family systems theories, assessment, and techniques in their professional consultation work with organizations.

9. Up to 220 of the required 500 hours of supervised direct client contact and 44 of the required 100 hours of face-to-face supervision not completed during a practicum and/or internship during the completion of the qualifying degree program or postgraduate training institute may be completed once an applicant has registered as a MFT intern and is under the supervision of a LMFT board approved supervisor. These hours shall be added to the required 2000 hours of supervised direct client contact required for licensure.

B. Specific Coursework Requirements—Option 3

1. Academic Course Content. An applicant with a master's or doctoral degree in marriage and family therapy or a related clinical mental health field from programs not accredited by the COAMFTE or with a certificate from a postgraduate training institute in marriage and family therapy not accredited by the COAMFTE must have the specified coursework in each of the following areas (one course equals three semester hours or its equivalent as defined in Paragraph A.3 of this Section.

a. Theoretical Knowledge of Marriage and Family Therapy—minimum of two courses. Courses in this area shall provide academic instruction in the historical development, empirical foundations, and contemporary conceptual directions of the field of marriage and family therapy. Coursework shall provide a comprehensive survey and substantive understanding of the systems paradigm, family therapy theory, and the major models of marriage, couple, and family therapy practice. Overview courses in which systems theory is surveyed equally as one of several theories do not qualify for this area.

b. Clinical Knowledge of Marriage and Family Therapy—minimum of four courses. Courses in this area shall provide academic instruction in clinical intervention as it relates to family systems theory. Coursework shall highlight clinical practice in couples and family therapy in relation to cultural and racial diversity, gender, sexual functioning/orientation, violence, addiction, abuse and other relevant issues. Coursework shall focus on the treatment of individuals, couples, and families from a systemic/relational perspective and in response to a wide variety of presenting problems.

c. Assessment and Treatment in Marriage and Family Therapy—minimum of two courses. One course must be in psychopathology. Courses in this area shall provide academic instruction from a systemic/relational

perspective in psychopharmacology, physical health and illness, traditional psycho diagnostic categories including the use of the Diagnostic and Statistical Manual of Mental Disorders and the assessment and treatment planning for the treatment of mental, intellectual, emotional, or behavioral disorders within the context of marriage and family systems.

d. Individual, Couple, and Family Development—minimum of one course. Courses in this area shall provide academic instruction in individual, couple, and family development across the lifespan.

e. Professional Identity and Ethics—minimum of one course. Courses in this area shall provide academic instruction in the development of professional identity, ethical and legal issues, scope of practice, professional membership, certification, and licensure. Coursework shall focus on ethical and legal issues related to the practice of marriage and family therapy, including but not limited to the AAMFT Code of Ethics, confidentiality, legal responsibilities and liabilities of clinical practice and research, family law, record keeping, reimbursement, the business aspects of practice, and familiarity with regional and federal laws as they relate to the practice of individual, couple and family therapy. Generic courses in ethics do not meet this standard.

f. Research—minimum of one course. Courses in this area shall provide academic instruction in the understanding and performance of research. Coursework shall focus on content such as research methodology, data analysis, research evaluation, and quantitative and qualitative research.

g. Additional Learning—minimum of one course. Courses in this area will augment students' specialized interest and background in individual, couple, and family therapy and may be chosen from coursework offered in a variety of disciplines.

2. Academic Supervision—as part of their degree program, an applicant must have completed 500 supervised face-to face direct client contact hours with individuals, couples, families, and/or groups from a systemic/relational perspective with 100 hours of face-to-face supervision. At least 250 of these hours must be with couples or families present in the therapy room. If a student is simultaneously being supervised and having direct client contact, the time may be counted as both supervision time and direct client contact time.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:1602 (June 2011), repromulgated LR 37:2163 (July 2011), amended LR 38:

§3315. Requirements for the Registration and Supervision of MFT Interns

A. General Provisions

1. The board, upon recommendation of the advisory committee, shall grant those persons who make formal application and satisfactorily meet all the requirements of this Rule the position of registered MFT intern.

2. Persons who apply to the board for qualification as a MFT intern must meet the specified degree requirements and must successfully complete a minimum of two years of work experience in marriage and family therapy as specified in Section 3315 C.1 under qualified supervision as

determined by the advisory committee and approved by the board. Upon qualification, the MFT intern shall be considered an applicant in process for licensure as a LMFT.

3. A member of the advisory committee who has functioned as a board-approved supervisor for a person making application for licensure as a LMFT or certification as a board-approved supervisor shall not participate in deliberations in regard to or vote on the approval of said applicant.

B. Definitions for Supervision

Consultation—a voluntary relationship between professionals of relatively equal expertise or status wherein the person being consulted offers advice or information on an individual case or problem for use by the person asking for assistance. The consultant has no functional authority or legal or professional responsibility for the consultee, the services performed by the consultee, or the welfare of the consultee's client. Consultation is not supervision. Experience under contract for consultation will not be credited toward fulfillment of supervision requirements of MFT interns or supervisor candidates.

Co-Therapy Supervision—qualified supervision that takes place during a therapy session in which the LMFT board-approved supervisor acts as a co-therapist with the MFT intern.

Direct Work Experience—psychotherapeutic services delivered face-to-face to individuals, couples, families, or groups in a setting and in a manner approved by the advisory committee as part of the intern's plan of supervision.

Group Supervision—qualified supervision of more than two and no more than six MFT interns with one or more board-approved supervisors. Group supervision provides the opportunity for the supervisee to interact with other supervisees and offers a different learning experience than that obtained from individual supervision.

Indirect Work Experience—collateral services rendered to clients that relate to proper case management, such as telephone contact, case planning, observation of therapy, record keeping, travel, administrative activities, consultation with community members or professionals, or supervision.

Individual Supervision—qualified supervision of one or two individuals by one LMFT board-approved supervisor.

Live Supervision—individual and/or group supervision in which the supervisor directly observes the case while the therapy is being conducted and has the opportunity to provide supervisory input during the session. When a supervisor conducts live supervision the time is counted as individual supervision for up to two interns providing therapy in the room with the client(s) and for up to two interns observing the therapy and interacting with the supervisor. The time is counted as group supervision when more than two MFT interns involved in direct client contact or more than two observers interacting with the supervisor are present, providing that there are no more than six interns involved.

LMFT Board-Approved Supervisor—an individual who has made formal application for certification as an LMFT board-approved supervisor documenting that he or she has satisfactorily met the standards specified in the Rule for LMFT board-approved supervisors as determined by the advisory committee and has received a letter from the board certifying them as such. Under no circumstances may an

LMFT board-approved supervisor be related to by birth or marriage, live in the same household with, be an employee of, or maintain any other relationship with the MFT intern that may be considered a dual relationship which may impede the LMFT board-approved supervisor from effectively providing for the professional development of the intern and monitoring the ethical and professional quality of the intern's service delivery to clients. During the course of the supervisory process, The LMFT board-approved supervisor maintains an appropriate level of responsibility for the intern's delivery of services and provides an accurate and true representation to the public of those services and the supervisor/supervisee relationship. A LMFT board-approved supervisor may use the initials LMFT-S for licensed marriage and family therapy supervisor after his or her name. Henceforth, the LMFT board-approved supervisor will be called the approved supervisor or the supervisor.

LMFT Registered Supervisor Candidate—an individual who has made formal application for registration as a LMFT registered supervisor candidate documenting that he or she has satisfactorily met the standards specified in the Rule for LMFT-registered supervisor candidate as determined by the advisory committee and has received a letter from the board indicating their registration as such. The candidate is under the supervision of an LMFT board-approved supervisor for the purpose of certifying as an LMFT board-approved supervisor in accordance with the plan of supervision-of-supervision approved by the advisory committee. The LMFT registered supervisor candidate performs the same duties as and is responsible to maintain a level of care for supervisees that meets the standards for LMFT board-approved supervisors as defined in this Rule. The LMFT registered supervisor candidate at the successful completion of the supervision-of-supervision process must make formal application to the board for qualification as an LMFT board-approved supervisor. A LMFT registered supervisor candidate may use the initials LMFT-SC after his or her name. Any portion of the Rule that applies to board-approved supervisors will also be considered to apply to supervisor candidates except where specifically noted. The LMFT registered supervisor candidate (LMFT-SC) will henceforth be called the supervisor except in instances that pertain only to candidates, where the terms supervisor candidate or candidate will be used.

Qualified Supervision—supervision of the clinical services of a MFT intern by a board-approved supervisor or supervisor candidate for the purpose of qualifying the intern for licensure as a LMFT in Louisiana in accordance with the plan of supervision approved by the advisory committee. Under no circumstances shall any contact that is not face-to-face (such as interaction by conventional correspondence, telephone, e-mail, instant message, video conference, etc.) between an LMFT board-approved supervisor or supervisor candidate and a MFT intern be considered qualified supervision unless such contact is pre-approved by the advisory committee as part of the intern's plan of supervision.

a. Administrative supervision conducted to evaluate job performance or for case management rather than the clinical supervision of therapy provided to clients shall not be considered qualified supervision.

b. Any didactic process wherein techniques or procedures are taught in a group setting, classroom, workshop, or seminar shall not normally be considered qualified supervision. If, however, the board-approved supervisor deems such experience as necessary to the intern's successful completion of his or her internship, such experience may be included in the intern's plan of supervision. Approval of such experience as qualified supervision will be at the discretion of the advisory committee.

c. Consultation, staff development, or orientation to a field program, or role-playing of family interrelationships as a substitute for current clinical practice shall not be considered as qualified supervision.

Registered MFT Intern—an individual who has made formal application for registration as a registered MFT intern documenting that he or she has satisfactorily met the standards specified in the Rule for registered MFT interns as determined by the advisory committee and who has received a letter from the board indicating their registration as such. A registered MFT intern may use the initials MFT-I after his or her name. It is the responsibility of the registered MFT intern to comply with this Rule and board policy in the provision of services to their clients during their internship. It is also the registered MFT intern's responsibility to offer reasonable compliance to the plan of supervision and to the directives and suggestions of their supervisor as they are consistent with law, ethics, statutes, and board policy. It is the primary responsibility of the intern to ensure that he or she has a thorough, current knowledge of his or her legal, ethical, and professional responsibilities and that his or her behavior is in compliance with ethical and legal requirements. Henceforth, the registered MFT intern will be called the MFT intern or in some instances the intern.

Supervision—the professional relationship between a supervisor and supervisee that nurtures the professional self of the supervisee, promotes the development of the supervisee's therapeutic knowledge and skill, contributes to the supervisee's development of sound ethical judgment, and reasonably ensures that the therapeutic services delivered by the supervisee meet a minimum standard of clinical and ethical quality. The supervisor provides guidance and instruction that is of such quality, frequency, and regularity that the clinical and professional development of the supervisee is promoted and the supervisee's service delivery is adequately monitored. Supervision involves the clinical review of the therapist's work with clients that may utilize therapist self-report and review of clinical documentation, review of audiotapes or videotapes, or direct observation of live therapy sessions.

The Plan of Supervision for MFT Interns—a written agreement between the board-approved supervisor and the MFT intern that establishes the supervisory framework for the postgraduate clinical experience of the intern and describes the expectations and responsibilities of the board-approved supervisor and the MFT intern as supervisee. It is the responsibility of the MFT intern to submit the plan of supervision to the advisory committee in a manner consistent with advisory committee policy.

The Plan of Supervision-of-Supervision for Supervisor Candidates—a written agreement between the board-

approved supervisor and the supervisor candidate that establishes the framework for the supervision-of-supervision of a licensed marriage and family therapist who is training to become an LMFT board-approved supervisor and that describes the expectations and responsibilities of the supervisor and the supervisee. It is the responsibility of the supervisor candidate to submit a plan of supervision-of-supervision to the advisory committee in a manner consistent with advisory committee policy. Henceforth, the plan of supervision-of-supervision for supervisor candidates shall be called the plan of supervision-of-supervision.

C. MFT Intern Supervision Requirements for Licensure

1. A MFT intern must complete an internship under the supervision of a board-approved supervisor or registered supervisor candidate that consists of qualified post-graduate work experience in marriage and family therapy and that includes at least 3,000 hours of clinical services to individuals, couples, families, or groups.

a. At least 2,000 hours must qualify as direct work experience. Up to 500 hours of direct work experience received during the completion of a graduate program that is systemically oriented as determined by the advisory committee may be counted toward the required 2000 hours. If the applicant's academic practicum or internship is from another institution other than that of their qualifying degree, then the internship or practicum supervisor must have possessed training substantially equivalent to that of an approved LMFT supervisor and the supervision must have been conducted from a systemic perspective as determined by the advisory committee.

b. The remaining 1,000 hours may be indirect work experience or other professional activities that may include but are not limited to qualified supervision, workshops, public relations, administrative tasks, consulting with referral sources, etc. as approved by the advisory committee.

c. The intern shall complete his or her internship in not less than two and no more than seven years from the date the intern is registered with the board.

d. Applicants for registration as MFT interns shall not provide psychotherapeutic services to clients unless they have received an official letter from the board qualifying them to do so or unless some other qualifying mental health license allows them to deliver such services. To continue employment in a clinical setting post graduation, applicants who have graduated with qualifying degrees have 60 days from their date of graduation to apply for registration.

2. The internship must include at least 200 hours of qualified supervision, of which at least 100 hours must be individual supervision. The remaining 100 hours may be group supervision.

a. Up to 100 hours of face-to-face supervisor contact received during the completion of the applicant's qualifying academic experience graduate program that is systemically oriented as determined by the advisory committee may be counted toward the required 200 hours of qualified supervision. Of this 100 hours, only 50 hours may be counted as individual supervision.

3. The intern's plan of supervision must reflect that the intern is receiving supervision in the application of systemically based approaches to therapy with all clients.

4. The intern may begin accruing client- and supervisor-contact hours only after the intern has received an official letter of registration from the board.

5. The intern will be granted a change of approved supervisors or an additional approved supervisor only upon the approval of appropriate documentation as determined by the advisory committee.

a. In the event of a change or addition of supervisor(s), the intern must submit sections 2 and 3 of the MFT intern registration form for each proposed supervisor. Supervision with the new supervisor is not approved until the intern receives a letter from the board approving the new supervisor and plan of supervision.

b. A change of supervisors or additional supervisor(s) will not be approved until all of the intern's existing supervisor(s) have submitted a documentation of experience form for the intern in accordance with advisory committee policy.

6. Final approval of the intern's supervised work experience toward licensure shall be at the discretion of the advisory committee and only upon recommendation of the board-approved supervisor(s).

C.7. - D.4.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:158 (February 2003), amended LR 29:2787 (December 2003), LR 35:1114 (June 2009), LR 38:

§3317. Qualification of the Board-Approved Supervisor and Registered Supervisor Candidate

A. General Provisions

1. The board, upon recommendation of the advisory committee, shall grant those persons that make formal application and satisfactorily meet all the requirements of this Rule the position of board-approved supervisor or registered supervisor candidate.

2. The applicant for certification as a board-approved supervisor or registration as a supervisor candidate shall have maintained an active license in good standing as a LMFT for a minimum of two years.

3. The applicant who has an unresolved or outstanding complaint or who is under a consent order or participating in a plan of discipline as a mental health professional must indicate this on his or her formal application and shall be granted board-approved supervisor or supervisor candidate's status only at the discretion of the advisory committee.

B. Requirements For Certification as a Board-Approved Supervisor

1. Applicants for certification as a LMFT board-approved supervisor must make formal application to the board in accordance with advisory committee policy demonstrating that he or she has satisfactorily met the following requirements.

a. Experience Requirements. While maintaining a license in good standing as a LMFT, the applicant must have completed a minimum of two years of professional experience as a marriage and family therapist working with individuals, couples, families or groups from a systemic perspective or working as an academic clinical supervisor utilizing a systemic orientation as determined by the advisory committee.

b. Coursework Requirements. The applicant must have completed:

i. a one-semester graduate course in marriage and family therapy supervision from a regionally accredited institution; or

ii. an equivalent course of study consisting of a 15-hour didactic component and a 15-hour interactive component in the study of marriage and family therapy supervision approved by the advisory committee. The interactive component must include a minimum of four persons.

c. Supervision-of-Supervision Requirements. The applicant must have completed 36 hours of supervision-of-supervision of marriage and family therapy with the oversight of a designated board-approved supervisor as determined by the advisory committee. Registered supervisor candidates may not qualify to provide supervision-of-supervision to other registered supervisor candidates.

d. The applicant for the position of LMFT board-approved supervisor who is not registered as a supervisor candidate may not begin qualified supervision of MFT interns until receipt of an official approval letter from the board as a LMFT board-approved supervisor.

4. Applicants for certification as a board-approved supervisor must submit with their application for certification a nonrefundable application fee of \$100.

5. Designation as an AAMFT board-approved supervisor may qualify a person to become an LMFT board-approved supervisor. AAMFT supervisors must make application to the board in accordance with advisory committee policy in order to certify as board-approved supervisors. AAMFT supervisors who have not certified to be LMFT board-approved supervisors shall not supervise MFT interns. Supervision provided by an AAMFT supervisor who has not received certification from the board qualifying them as a LMFT board-approved supervisor shall not count toward licensure.

6. The board-approved supervisor shall attend a LMFT board-approved supervisor's orientation approved by the advisory committee within one year of the board-approved supervisor's date of certification. This orientation may also be counted as continuing education toward the board-approved supervisor's licensure renewal as a marriage and family therapist.

a. Board-approved supervisors who fail to meet this requirement within one year of their initial certification as board-approved supervisors will not be approved for new supervisees until the requirement is met. Failure to meet this requirement within two years of the date of approval may result in the suspension of approved supervisor status.

b. This requirement may be met during the supervisor candidate's supervision-of-supervision. If the candidate elects to do so, the orientation hours may count toward the continuing education requirements for renewal of his or her LMFT license.

C. Requirements for Registration as a Registered Supervisor Candidate

1. The applicant for registration as a LMFT registered supervisor candidate must submit to the board a formal application and a plan of supervision-of-supervision in accordance with advisory committee policy.

a. The registered supervisor candidate's supervision-of-supervision must include:

i. a minimum of two MFT students or MFT interns supervised for a minimum of nine months each;

ii. at least 90 hours of supervision of approved supervisees. These 90 hours of supervision must be completed in no less than one year and no more three years with the oversight of his or her designated board-approved supervisor.

b. The applicant for registration as a LMFT registered supervisor candidate shall not supervise MFT interns or begin accruing supervisor or supervisee contact hours toward his or her certification as a board-approved supervisor until he or she has received an official letter from the board approving his or her registration as a supervisor candidate.

2. The registered supervisor candidate who has successfully completed his or her plan of supervision-of-supervision must make formal application in accordance with advisory committee policy to be considered for certification as a board-approved supervisor.

3. Final approval of the approved supervisor candidate's supervised work experience toward certification as an approved supervisor shall be at the discretion of the advisory committee and only upon recommendation of the candidate's board-approved supervisor(s).

D. Renewal of Certification as a Board-Approved Supervisor

1. The board-approved supervisor shall renew his or her board certification to supervise MFT interns every four years. Supervisors will receive a renewal announcement from the board providing them with their required renewal date and will receive a renewal notice every four years thereafter.

2. To qualify for renewal, board-approved supervisors must:

a. maintain an active LMFT license in good standing as defined by this Rule. Applicants for renewal of their board-approved supervisory status that are under a consent order as a licensee may be renewed only at the discretion of the advisory committee.

b. complete six clock hours of continuing education in clinical MFT supervision prior to each renewal date for current renewal period. These continuing education hours may also count toward the board-approved supervisor's renewal requirements for licensure as a LMFT;

i. Continuing education for board-approved supervisors must be specifically relevant to the renewal candidate's role as clinical supervisor of MFT interns as determined by the advisory committee. The content of workshops and seminars that qualify for continuing education credit for renewal candidates may be in theories and techniques of MFT supervision as well as ethical and legal issues related to MFT supervision, case management, or topics relative to a specific supervised setting.

ii. Requirements otherwise applicable to continuing education hours for board-approved supervisors are the same as continuing education hours required for maintenance of the supervisor's LMFT license as defined in these rules.

c. successfully complete the board-approved orientation workshop for supervisors. The orientation shall

not count toward the required six hours of required continuing education for board-approved supervisors;

d. submit a completed board-approved supervisor renewal application along with any updates to the supervisor's statement of practice in accordance with advisory committee policy;

e. remit a renewal fee of \$100.

3. After the renewal candidate has successfully completed the above requirements, the board upon recommendation of the advisory committee shall issue a document renewing the supervisor's board certification for a term of four years.

a. The board approval of any board-approved supervisor who fails to meet renewal requirements shall lapse; however, the failure to renew said approval shall not deprive said supervisor the right of renewal thereafter.

b. Board-approved supervisors who do not renew their board-approved supervisor's status will not be approved for new MFT interns until the board-approved supervisor has renewed his or her supervisory approval or has successfully reapplied for board-approved supervisor status.

c. A board-approved supervisor who has allowed his or her board-approved supervisor status to lapse may renew within a period of two years after the expired renewal date upon payment of all fees in arrears and presentation of evidence of completion of the continuing education and orientation requirements.

d. Upon late renewal or reapplication, the board-approved supervisor's four-year renewal cycle will begin on his or her nearest licensure renewal date to the supervisor's renewal/reapproval.

e. Application for renewal after two years from the date of expiration will not be considered for renewal. Applicants whose supervisor status has lapsed for two years or more must re-apply for certification as a board-approved supervisor under current requirements.

f. Failure to renew or reapply for board approved supervisory status does not necessarily impact the supervisor's right or ability to renew or reapply as a LMFT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37: 1102, 1103, and 1116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 38:

§3319. Responsibilities of the MFT Intern

A. General Responsibilities

1. The MFT intern is responsible to be thoroughly aware of his or her legal, ethical, and professional responsibilities as an intern and to maintain a level of care for clients that meets the standards for licensed marriage and family therapists as described in this Rule.

2. The MFT intern is responsible to meet with the board-approved supervisor(s) for qualified supervision in the manner prescribed in the plan of supervision. The MFT intern must receive qualified supervision at a minimum frequency of two supervisor-contact hours a month.

3. The MFT intern is responsible to collaborate with his or her approved supervisor(s) in order to develop and submit to the advisory committee a plan of supervision as defined in Section 3315.B.

4. It is the responsibility of the intern to immediately report to the approved supervisor(s), the intern's employer or contractor, and the board any changes in the intern's status (loss of employment, change of job status, serious illness, legal difficulty, etc.) that significantly affect the intern's continued qualification as a MFT intern, due qualification as a LMFT, ability to meet the terms of the plan of supervision, or ability to provide the standard of care to clients as defined in this Rule.

a. The intern shall report to the approved supervisor(s) and the board within thirty days any change in status that would affect the ability of the supervisor or the board to contact the intern, such as changes in postal address, telephone number, or e-mail address.

b. As the board-approved supervisor has knowledge, he or she shall ensure that the intern reports such changes in status to the board in accordance with advisory committee policy.

c. The intern is responsible to collaborate with his supervisor(s) over the course of his or her internship to develop, maintain, and fulfill a plan of supervision that meets the developmental needs of the intern, provides for an appropriate level of professional care for the intern's clients, allows for the adequate monitoring of the intern's practice by the board-approved supervisor(s) or supervisor candidate, and allows for the intern's timely qualification as a LMFT.

d. It is the responsibility of the intern to submit amendments to the plan of supervision to the advisory committee within thirty days for approval in accordance with advisory committee policy.

5. The MFT intern is responsible to meet with the approved supervisor(s) with a regularity, frequency, and manner prescribed by the board-approved plan of supervision.

a. The intern shall inform the board in writing within 30 days in accordance with advisory committee policy in the event that the intern's supervisor becomes unwilling or unable to fulfill his or her responsibility to the intern as defined in the board-approved plan of supervision.

b. In the event that an approved supervisor becomes unwilling or unable for any reason to fulfill the duties as a qualified supervisor, the advisory committee shall assist this supervisor's interns according to advisory committee policy in acquiring interim supervision until a suitable board-approved supervisor can be located in order to preserve continuity of care for the intern's clients.

c. Should an interim supervisor not be located in a timely manner as determined by the advisory committee, the intern must suspend services to clients until such time as a new supervisor can be located. In such circumstances it is the responsibility of the intern to work with his administrative supervisor to see that his clients are appropriately referred.

6. The intern is responsible to be thoroughly aware of the terms of his or her employment as an employee or private contractor as well as the administrative policies and procedures of his employer and/or administrative supervisor.

a. In the event that the standard of professional behavior and/or client care provided by the intern's employer or administrative supervisor exceeds that of the

minimum standards in this Rule, the intern should to the best of his ability adhere to the higher standard.

b. In the event that a conflict between the policies, procedures, or directives of the intern's employer or administrative supervisor impedes the ability of the intern to comply with the directives of the intern's board-approved supervisor(s), the terms of the intern's plan of supervision, or the standard of professional behavior described in this Rule, the intern shall inform his or her approved supervisor(s) immediately.

7. The intern must refrain from the ownership of all or part of any mental health counseling practice and from acceptance of any direct fee for service from therapy clients. The intern may receive a wage for services rendered as an employee or as a private contractor. Should the intern receive monetary compensation as a private contractor for services for which his status as an intern qualifies him, the contractual agreement under which the intern receives compensation must specify a person who functions in the workplace as an administrative on-site supervisor for the intern in his delivery of services under the contract.

B. Specific Responsibilities of the MFT Intern to the Approved Supervisor. It is the responsibility of the MFT intern to:

1. follow to the best of the intern's ability the clinical suggestions and directives of the supervisor as the supervisor's suggestions and directives are consistent with the ethical, legal, and professional standards provided in this Rule as determined by the advisory committee;

2. provide the supervisor with adequate information about his or her clinical work with clients such that the supervisor can monitor the intern's clinical practice and assist the intern in maintaining an appropriate standard of care for all clients. The intern shall provide his supervisor(s) with reasonable access to all written or electronic documentation that relates to the intern's provision of therapeutic services to his clients;

a. The intern shall inform the supervisor(s) immediately in the event that the intern believes that a client has committed or is a risk for suicide, homicide, or any other seriously harmful behavior to self or others or is the perpetrator of abuse to a minor, elderly, or disabled person.

b. The intern's reporting such information as described in Subparagraph B.2.a of this Section to the supervisor is not a substitute for the intern's preeminent obligation to report directly to appropriate authorities in circumstances in which the law or ethics requires the mandatory reporting of suspected abuse or imminent personal risk.

3. earnestly endeavor to resolve with the intern's supervisor(s) any personal or professional conflict that may hinder the intern in collaborating with supervisor(s) in the provision of an appropriate standard of care to clients, successfully completing the terms of the plan of supervision, or successfully qualifying for licensure as a LMFT;

a. In the event that such conflict cannot be resolved in a timely manner, the intern shall request assistance in writing from the advisory committee in accordance with advisory committee policy.

b. The intern will accept as final any plan to resolve such conflict upon recommendation of the advisory committee as approved by the board.

4. in the event of multiple supervisors, the intern will immediately inform the supervisor(s) if the clinical directives or ethical guidance of one supervisor seem to significantly conflict with another such that the intern is impeded in providing an appropriate level of client care. In the event that such conflict cannot be resolved in a timely manner, the intern or the supervisor(s) may request assistance in writing from the advisory committee in accordance with advisory committee policy.

C. Revocation, Suspension, or Limitation of the Terms of the Registration of the registered MFT intern.

1. The board upon recommendation of the advisory committee may withhold, deny, revoke, suspend or otherwise limit the terms of the registered status of a MFT intern on a finding that the intern has violated any of the rules, regulations, or ethical standards for licensed marriage and family therapists as pertains to the supervision of MFT interns contained in this Rule or prior final decisions and/or consent orders involving the MFT intern.

2. The advisory committee shall provide due notice to the intern's designated approved supervisor(s) of any change or potential change in the intern's qualification as a MFT intern in accordance with advisory committee policy.

3. The approved supervisor(s) of an intern whose registration as an MFT intern has been revoked, suspended, or otherwise limited shall immediately inform his administrative or site supervisor(s) of the intern's of change in status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37: 1102, 1103, and 1116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 38:

§3321. Responsibilities of the LMFT Board-Approved Supervisor and Registered Supervisor Candidate

A. General Responsibilities

1. It is the primary function of supervisors in their relationships with their supervisees to protect the welfare of the public in every circumstance. Supervisors work with the board and their interns to protect the right of every client to ethical, professional treatment. Henceforth, any portion of the Rule that applies to board-approved supervisors will also be considered to apply to supervisor candidates except where specifically noted.

a. The supervisor shall maintain a current knowledge of and represent accurately to interns and to the public the process of qualification of MFT interns for licensure.

b. The supervisor shall manage all information pertaining to the clients of the intern with the same level of confidentiality mandated in this Rule for licensed marriage and family therapists as in their interaction with their own clients.

c. The supervisor shall, to the best of his ability and knowledge, address in an accurate, timely fashion any reasonable question or concern directed to the supervisor by clients of the intern about the professional status of the intern or the quality of care being provided to the client by the intern.

d. In the event that the client of an intern makes a complaint or provides information to the supervisor that the intern may have committed a breach of the minimum

standards of client care provided in this Rule resulting in harm or potential harm to the client, it is the responsibility of the supervisor to provide corrective feedback to the intern, warn the client of potential risk, and report the actions of the intern to the board in accordance with advisory committee policy.

2. A supervisor may not have more than a combined total of 10 supervisees, including MFT interns and interns in other disciplines and/or registered supervisor candidates.

3. The supervisor is responsible for assisting the intern in developing and maintaining the plan of supervision and monitoring the timely submission of appropriate documentation to the board on behalf of the intern.

4. The supervisor shall provide qualified supervision to the intern until the supervisor has received official notice from the board that the intern has licensed as a LMFT, been officially assigned by the board to another supervisor, or has otherwise lost or forfeited qualification as an MFT intern. Nonpayment of the supervisor's fees by the intern is not grounds for the suspension by the supervisor of supervisory meetings with the intern as specified by the board-approved plan of supervision.

5. It is the responsibility of the supervisor to immediately report to the board and his designated interns and/or supervisees in accordance with advisory committee policy any changes in his status (loss of employment, serious illness, legal problems, etc.) that may significantly affect his certification as an approved supervisor or supervisor candidate or his ability as an approved supervisor to fulfill his duties as described in this Rule or in the plan of supervision/plan of supervision-of-supervision. The supervisor shall within thirty days also report to the board any change in status that may affect the ability of the board to contact him or her (change of address, telephone number, e-mail address, etc.).

6. As he has knowledge, the supervisor shall ensure that the intern reports such changes in status to the board in accordance with advisory committee policy that would affect the ability of the supervisor or the board to contact the intern, such as changes in postal address, telephone number, or e-mail address.

7. It is the responsibility of the supervisor to supervise interns within his or her scope of practice. The supervisor shall not present himself as providing supervision in any particular therapeutic approach, technique, or theoretical orientation in which the supervisor has not been thoroughly trained and had adequate experience to provide competent supervision as determined by the advisory committee.

8. It is the responsibility of the supervisor to observe the practice of the intern through clinical case review, real-time observation of the intern's sessions, or by reviewing session video- or audio-tapes such that the supervisor is sufficiently able to monitor the practice of the intern and guide the intern in maintaining the minimum standard of care for his clients defined in this Rule and the plan of supervision.

a. The supervisor shall ensure that the regularity, duration, and quality of supervision sessions are adequate to provide continuity, support, and nurturance to the intern and to monitor the professional quality of the intern's service provision to clients.

b. The supervisor shall provide timely, accurate feedback to the intern, the intern's other supervisors, and the advisory committee in accordance with advisory committee policy in regard to the professional developmental of the intern, his or her progress in completing the plan of supervision, or any other information that relates to the intern's ability to provide adequate care to clients.

c. When a supervisor receives information that suggests that the behavior of an intern may present a clear and significant threat to the welfare of a client, it is the responsibility of the supervisor to immediately provide corrective feedback to the intern.

d. In the event of Subparagraph A.8.c of this Section and if the supervisor determines that the intern has failed to respond appropriately by acting to protect the welfare of the client, it is the responsibility of the supervisor to immediately report the behavior of the intern to the board according to advisory committee policy and immediately inform the client of the potential risk. The supervisor should use his clinical judgment in such matters, balancing his or her roles as mentor to the intern and protector of the public with protection of the public preeminent.

9. The supervisor shall keep true, accurate, and complete records in accordance with advisory committee policy of his or her interactions with interns and their clients and respond within 30 days to any request by the board to audit records pertaining to the supervision of interns.

10. It is the responsibility of the supervisor to recommend for licensure as a LMFT those and only those MFT interns that to the best of his or her knowledge have completed the requirements for licensure contained in this statute, satisfactorily fulfilled the terms of the board-approved plan of supervision, and have otherwise demonstrated a satisfactory level of competence in delivering professional services to their clients during the course of their internship.

11. As is applicable, it is the responsibility of the supervisor to recommend for certification as board-approved supervisors those and only those supervisor candidates that have satisfactorily fulfilled the terms of the board-approved plan of supervision-of-supervision and have otherwise demonstrated a satisfactory level of competence in delivering professional services to their supervisees.

B. Specific Responsibilities of the Supervisor to the MFT Intern. It is the responsibility of the supervisor to:

1. review with the intern a copy of the supervisor's board-approved statement of practice, provide a copy of this statement to the intern, and file a copy of this statement with the board in accordance with advisory committee policy;

2. provide guidance and training to the intern in the ethical and competent delivery of psychotherapeutic services in a manner that leads the intern toward qualification as a LMFT. This includes but is not limited to guidance and training in diagnosis and treatment of emotional, mental, behavioral, and addictive disorders, problem assessment, treatment plan development, application of therapeutic knowledge, joining skills, technique selection, intervention skills/outcome assessment, application of ethical and legal principles, case documentation and reporting, case management, and consultation protocol;

3. provide a respectful and confidential learning environment for the intern that promotes the intern's professional development as a LMFT, encourages the intern's successful completion of the plan of supervision, and provides a controlled space for supervision sessions where the intern may discuss confidential case material without the risk of violating client confidentiality;

4. oversee the formulation of the intern's plan of supervision in accordance with advisory committee policy that provides reasonable access for the intern to the board-approved supervisor and the supervision process, meets the developmental needs of the intern, and affords the supervisor adequate contact with the intern to appropriately monitor the quality of the intern's service delivery to clients;

a. The intern or the supervisor may request to amend the plan of supervision during the course of internship. Changes to the plan of supervision should be the result of collaboration between the intern and the board-approved supervisor;

b. It is the responsibility of the supervisor to oversee the intern's submission of amendments to the plan of supervision to the advisory committee within thirty days for approval in accordance with advisory committee policy.

5. assist the intern in finding a suitable resolution in the event that the policies of the intern's employer or contractor impede the intern in providing a level of care to clients that meets the standards provided by board policy or this Rule. The supervisor should make reasonable effort to assist the intern in resolving such conflicts in a manner that if possible allows the intern to maintain his or her employment, comply fully with responsibilities as described in this statute, and complete the plan of supervision successfully;

6. assist the intern in identifying personal and professional strengths and weaknesses that affect the intern's development as a family therapist and provide regular, meaningful feedback in accordance with advisory committee policy that will help the intern reinforce his strengths while improving his weaknesses;

7. avoid any dual relationship that could result in exploitation of the intern, compromise the supervisor's ability to prioritize the welfare of the intern's clients, or hinder the supervisor in providing objective feedback to the board or the intern about his progress toward qualification as a LMFT.

a. In the event that the supervisor also has administrative responsibility for the intern in an agency or business, it is the responsibility of the supervisor to prioritize the welfare of the intern's clients and the developmental needs of the intern over the needs of the supervisor's employing organization.

b. The supervisor should not employ the intern in his or her business as an employee or as a private contractor. In the event that such employment is necessary to the intern's ability to qualify as a MFT intern, special permission for such employment may be granted at the discretion of the advisory committee.

c. If the MFT intern is employed by or contracts with the supervisor in his business or private practice to provide services for which his status as MFT intern qualifies him, the supervisor must not profit monetarily from the services of the intern beyond the supervisor's reasonable and

customary fee for supervision as reflected in the board-approved supervisor's statement of practice and as defined in the intern's board-approved plan of supervision.

d. The supervisor shall not maintain any social relationship (friendship or romantic relationship) with the intern that could result in exploitation of the intern or could impair the objectivity of the supervisor in his or her roles as trainer of the intern and protector of the public.

8. submit all appropriate documentation designated for supervisors using the appropriate forms as determined by the advisory committee and in a manner that does not unnecessarily impede the intern's ability in a timely manner to qualify as a LMFT;

9. refer the intern for counseling or psychotherapy at the request of the intern or as the supervisor may deem prudent in assisting the intern in maintaining mental and emotional health sufficient to provide services to clients that meet the standard of care as defined by this Rule. The intern's supervisor(s) shall not under any circumstances provide counseling, psychotherapy, or psychological testing to the intern;

10. earnestly endeavor to resolve with the intern any personal, professional, or ethical conflicts that hinder the supervisor in effectively collaborating with the intern toward the provision of an appropriate standard of care to clients or successfully completing the terms of the plan of supervision.

a. It is the responsibility of the supervisor to take appropriate initiative to resolve such conflicts in a manner that is respectful to the intern and preserves continuity of care for the intern's clients.

b. In the event that such conflict cannot be resolved in a timely manner, the supervisor shall request assistance from the board in accordance with advisory committee policy.

D. Revocation, Suspension, or Limitation of the Board-Approved Supervisor Certificate of a Licensed Marriage and Family Therapist

1. The board upon recommendation of the advisory committee may withhold, deny, revoke, suspend or limit the board-approved supervisor certification of a LMFT on a finding that the board-approved supervisor has violated any of the rules, regulations, or ethical standards for board-approved supervisors as pertains to the supervision of MFT interns contained in this Rule or prior final decisions and/or consent orders involving the board-approved supervisor or supervisor candidate.

2. The advisory committee shall provide due notice to the supervisor and his or her assigned MFT interns and/or supervisor candidates of any change in the supervisor's qualification in accordance with advisory committee policy.

3. The board-approved supervisor or supervisor candidate has ninety days to appeal to the advisory committee in writing in accordance with advisory committee policy any withholding, denial, revocation, suspension, or limiting of the licensee's certification as board-approved supervisor or registration as an board-approved supervisor candidate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 38:

Family Impact Statement

As required by Act 1138 of the 1999 Regular Session of the Louisiana Legislature, the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to the respective legislative oversight committees.

1. The Effect on the Stability of the Family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect in the Functioning of the Family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of this proposed Rule will have little or no effect on family earnings and family budget. Affected privileged supervisors will have a minimal (\$100.00 every 4 years) impact on their operational costs.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Public Comments

Interested persons may submit written comments on these rules to Mary Alice Olsan, Executive Director, Licensed Professional Counselors Board of Examiners, 8631 Summa Avenue, Suite A, Baton Rouge, LA 70808 until June 20, 2012.

Mary Alice Olsan
Executive Director

(Sections 3317, 3319, 3321) are needed for the Board to codify and regulate the supervision of MFT Interns. In addition, beginning in December of FY 17 the LPC Board projects to receive additional revenues of \$3,300 every four (4) years from a new \$100 renewal fee imposed on Licensed Marriage and Family Therapist Board-Approved Supervisors (LMFT-S) (33 Supervisors x \$100 fee).

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

LMFT Supervisors of MFT Interns will incur a \$100 fee every four (4) years for renewal of their supervisor credential. In addition, LMFT-S's or Board Approved Supervisor Candidates (LMFT-SC) may charge MFT Interns for each hour of face-to-face supervision. Though the board does not regulate these fees, on average an LMFT-S or LMFT-SC will charge between \$50 and \$90 for every hour supervised. As such, depending upon the Supervisor's rate, this could result in estimated \$5,000 to \$9,000 in additional income for the LMFT-S or LMFT-SC for each MFT Intern (100 hours x \$50-\$90). If audited, an LMFT-S must submit proof of six (6) hours of continuing education in clinical MFT supervision during each renewal period. This may result in some minimal travel cost increases for the Supervisor.

In addition, the new direct client contact and face-to-face supervision hour requirements under section 3311(9) may result in some savings to MFT Interns if the Intern's academic program does not meet the board's requirements. Instead of having to return to school to complete the required supervision hours, the Intern can now complete the requirements through his/her LMFT-S or LMFT-SC. According to the board, supervision fees paid to LMFT-S and LMFT-SC tend to be less than academic fees, which will result in an indeterminable amount of savings to Interns. The Intern may now also cost avoid an indeterminable amount of the LMFT-S or LMFT-SC fees by completing a certain number of internship hours during their graduate programs according to the new provisions of 3315(C).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed Rule should not affect competition or employment.

Mary Alice Olsan
Executive Director
1205#027

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: License of Title for Marriage and Family Requirements for Licensure

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be an estimated one-time implementation cost to the Board of \$1,300 in FY 12. The cost will be absorbed within the budget of the Louisiana Licensed Professional Counselors (LPC) Board. Operating costs related to the Marriage and Family Therapist (MFT) Intern program are to be borne by program participants. There will be no other impact on any state or local governmental agency.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed revisions to the rules (Sections 3309, 3311, 3315) are needed primarily for clarification and have no significant fiscal impact. The proposed rules for adoption

NOTICE OF INTENT

Department of Revenue Policy Services Division

Certain Self-Propelled Vehicles
Removed from Inventory (LAC 61:I.4415)

Under the authority of R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to repeal LAC 61:I.4415, which provides criteria for determining whether sales or use tax is due upon items of equipment described in R.S. 47:305.22. That statute was repealed by Act 2005, No. 413, so the Rule no longer serves any purpose.

**Title 61
REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 44. Sales and Use Tax Exemptions

**§4415. Certain Self-Propelled Vehicles Removed from
Inventory**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.22.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), repealed by the Department of Revenue, Policy Services Division, LR 38:

Family Impact Statement

Implementation of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability, and autonomy. Specifically, the implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; or
6. the ability of the family or a local government to perform this function.

Public Comments

Interested persons may submit written comments until 4:30 p.m., June 11, 2012, to Frederick Mulhearn, Louisiana Department of Revenue, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Certain Self-Propelled Vehicles
Removed from Inventory**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The repeal of LAC 61:I.4415 will have no impact on state or local governmental units' cost. The rule provides criteria for determining whether sales/use tax is due upon items of equipment described in R.S. 47:305.22. That statute was repealed by Acts 2005, No. 413.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The repeal will have no impact on revenue collections of state or local governmental units. R.S. 47:305.22 had become obsolete, as the state tax on purchases of tangible personal property for lease or rental in an arm's length transaction had been eliminated for periods beginning January 1, 1991. Beginning in 1999, the local sales and use tax on purchases of property for lease or rental was phased out until it become completely exempt in 2002.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

The repeal of this rule will have no effect on costs or economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
1205#032

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

Electronic Funds Transfer (LAC 61:I.4910)

Under the authority of R.S. 47:1511 and 1519 and in accordance with the provisions of the Administrative Procedure Act, R.S.49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61.I.4910.

As part of its ongoing effort to provide guidance to taxpayers concerning the proper interpretation of the law and to prevent the loss of tax revenue to which the state is entitled under the law, the Department of Revenue proposes to amend LAC 61.I.4910 to more accurately account for payments remitted by electronic funds transfer. The department proposes to delete language within the current rule that provides a special exception from withholding tax return filing for employers who remit their withholding taxes to the department by electronic funds transfer. Beginning with taxable periods on or after January 1, 2012 all employers, including those who remit withholding taxes by electronic funds transfer, will be required to submit quarterly withholding tax returns reconciling the amounts of taxes payable to the department to their actual remittances during each calendar quarter.

**Title 61
REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 49. Tax Collection

§4910. Electronic Funds Transfer

A. - E.4. ...

5. Tax return must be filed.

a. A tax return or report must be filed separately from the electronic transmission of the remittance.

b. Failure to timely file a tax return or report shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law.

6. In situations involving extenuating circumstances as set forth in writing by the taxpayer and deemed reasonable by the secretary of the Department of Revenue, the secretary may grant an exception to the requirement to transmit funds electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 38:

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Rule will have no effect on the stability of the family.
2. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. Implementation of this proposed Rule will have no effect on the functioning of the family.
4. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.
5. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Public Comments

Interested person may submit written data, views, arguments, or comments regarding this proposed Rule to the Policy Services Division, by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be received no later than 5 p.m., June 27, 2012.

Public Hearing

A public hearing will be held on June, 28, 2012, at 10:30 a.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana 70802.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Electronic Funds Transfer**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
This rule is being amended to delete a special exception from withholding tax return filing for employers who remit withholding taxes by electronic funds transfer. This amendment is one of many changes in the withholding reporting and remittance model for all Louisiana employers. Beginning with taxes withheld on or after January 1, 2012, all employers will be required to submit quarterly withholding returns reconciling the amount of taxes remitted during the calendar quarter to the amounts withheld during the quarter. Implementation costs of changing the entire withholding model include form changes, costs to inform employers of reporting changes, and computer system development and modification. Computer system implementation costs were approximately \$625,000, and the other costs were minimal. Implementation costs were absorbed in the existing budget. Local governmental units are not affected by this proposal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This proposal should have no impact on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Persons affected by this rule are employers who remit withholding taxes by electronic funds transfer. The added reporting requirement is simple (7 lines). Costs to these employers are expected to be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Cynthia Bridges
Secretary
1205#033

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Withholding Tax Statements; Electronic Filing
Requirements (LAC 61:I.1515)

Under the authority of R.S. 47:114, 1511, 1519, and 1520 and in accordance with the provisions of the Administrative Procedure Act, R.S.49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61.I.1515.

Beginning with taxable periods on or after January 1, 2012, pursuant to R.S.47:114, 1519, and 1520 employers that are required to remit electronically are required to file a separate return electronically on a quarterly basis. Additionally, to correspond with administrative form changes relative to the use of Form L-3, Form L-3 will no longer be used for the purpose of annually reconciling accounts, but rather will be more effectively used as a transmittal for W-2s.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 15. Income: Withholding Tax §1515. Withholding Tax Statements and Returns—Electronic Filing Requirements

A. Employers that are required to electronically remit withholding tax pursuant to R.S. 47:1519(B) and LAC 61:I.4910.A, shall file a separate L-1 return electronically on a quarterly basis, effective for the periods beginning after December 31, 2011.

B. Employers are required to file a transmittal of withholding tax statements, Form L-3, with copies of the employee withholding statements, Form W-2s.

1. The L-3 transmittal and employee withholding statements must be filed on or before the first business day following February 27 for the preceding calendar year.

2. If a business terminates during the year, the L-3 transmittal and employee withholding statements must be filed within 30 days after the last month in which the wages were paid.

3. If the due date falls on a weekend or holiday, the report is due the next business day and becomes delinquent the following day.

C. The following employers are required to file the Form L-3, and the employee withholding statements, Form W-2s, electronically:

1. employers that file 250 or more employee withholding statements due on or after January 1, 2008;
2. employers that file 200 or more employee withholding statements due on or after January 1, 2010;
3. employers that file 150 or more employee withholding statements due on or after January 1, 2012;
4. employers that file 100 or more employee withholding statements due on or after January 1, 2014;
5. employers that file 50 or more employee withholding statements due on or after January 1, 2016.

D. Electronic Filing Options—The Form L-3, and the employee withholding statements, Form W-2, may be filed electronically as follows:

1. electronic filing using the LaWage electronic filing application via the LDR website, www.revenue.louisiana.gov;
2. submission on CD or DVD:
 - a. records must be submitted using a record layout that is consistent with the Internal Revenue Code requirements.
 - b. CDs and DVDs must be labeled with the following information:
 - i. file name;
 - ii. employer's Louisiana account number;
 - iii. employer's name;
 - iv. employer's mailing address;
 - v. tax year; and
 - vi. the CD or DVD number and total number of CDs or DVDs for multi-volume submissions (example: 1 of 3, etc.);
3. any other electronic method authorized by the secretary;
4. submissions by magnetic media including tapes and tape cartridges are no longer allowed.

E. Separate submissions must be made for each employer.
AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, R.S. 47:1519, R.S. 47:1520 and R.S. 47:114.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 38:

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Rule will have no effect on the stability of the family.
2. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. Implementation of this proposed Rule will have no effect on the functioning of the family.
4. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.
5. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Public Comments

Interested person may submit written data, views, arguments, or comments regarding this proposed Rule to the Policy Services Division, by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be received no later than 5 p.m., June 27, 2012.

Public Hearing

A public hearing will be held on June 28, 2012, at 2:30 p.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Withholding Tax Statements; Electronic Filing Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This rule is being amended to correspond with administrative form changes relative to the use of Form L-3. Form L-3 will no longer be used for the purpose of annually reconciling accounts and transmitting W-2s, but rather will be used only as a transmittal for W-2s. The reconciliation will now be done quarterly on the revised Form L-1. This rule is also being amended to include the requirement that employers, that are required to remit withholdings electronically, file the Form L-1 quarterly. This amendment is one of many changes in the withholding reporting and remittance model for all Louisiana employers. Beginning with taxes withheld on or after January 1, 2012, all employers will be required to submit quarterly withholding returns reconciling the amount of taxes remitted during the calendar quarter to the amounts withheld during the quarter. Implementation costs of changing the entire withholding model include form changes, costs to inform employers of reporting changes, and computer system development and modification. Computer system implementation costs were approximately \$625,000, and the other costs were minimal. Implementation costs were absorbed in the existing budget. Local governmental units are not affected by this proposal.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposal only affects the reporting method, not the amount of tax that is imposed. Therefore, this proposal should have no impact on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Persons affected by this rule are employers required to remit withholdings electronically. The proposed changes to this rule will result in employers filing 3 additional reconciliations per year. The added reporting requirement is simple (7 lines). Costs to these employers are expected to be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Cynthia Bridges
Secretary
1205#034

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of the Treasury Board of Trustees of the Louisiana School Employees' Retirement System

Internal Revenue Code Provisions (LAC 58:VII.Chapter 4)

Editor's Note: This Notice of Intent is being repromulgated to correct a submission error. The original Notice of Intent may be viewed in its entirety on pages 902-909 of the March 20, 2012 edition of the *Louisiana Register*.

In accordance with R.S. 49:950 et seq. of the Administrative Procedure Act, notice is hereby given that the Board of Trustees of the Louisiana School Employees' Retirement System has approved for advertisement the adoption of Chapter 4 of Part VII, included in Title 58, Retirement, of the Louisiana Administrative Code. This intended action complies with the statutory law administered by the Board of Trustees of the Louisiana School Employees' Retirement System. The proposed rules are being adopted pursuant to newly enacted R.S. 11:1165.1 (Acts 2011, No. 354), the effective date of *enactment* of which will be the formal adoption of these rules. Newly enacted R.S. 11:1165.1 provides that rules and regulations be adopted which will assure that the Louisiana School Employees' Retirement System will remain a tax-qualified retirement plan under the United States Internal Revenue Code and the Regulations thereunder. A preamble to this proposed action has not been prepared.

Title 58

RETIREMENT

Part VII. Louisiana School Employees Retirement System

Chapter 4. Internal Revenue Code Provisions

§401. Limitation on Benefits

A. The limitations of this Chapter shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

B. The annual benefit otherwise payable to a member under the plan at any time shall not exceed the maximum permissible benefit. If the benefit the member would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the maximum permissible benefit.

C. If the member is, or has ever been, a Member in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the employer or a predecessor employer, the sum of the member's annual benefits from all such plans may not exceed the maximum permissible benefit.

D. The application of the provisions of this chapter shall not cause the maximum permissible benefit for any member to be less than the member's accrued benefit under all the defined benefit plans of the employer or a predecessor employer as of the end of the last limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The

preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Section 1.415(a)-1(g)(4) of the Income Tax Regulations.

E. The limitations of this chapter shall be determined and applied taking into account the rules in Section G.

F. Definitions

Annual Benefit—a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this article. For a member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this chapter as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Section 1.401(a)-20, Q and A 10(d), and with regard to Section 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

a. No actuarial adjustment to the benefit shall be made for:

i. survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form;

ii. benefits that are not directly related to retirement benefits (such as a disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or

iii. the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this chapter, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this chapter applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form. The determination of the annual benefit shall take into account social security supplements described in Section 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the Income Tax Regulations, but shall disregard benefits attributable to employee contributions or rollover contributions. Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of

benefit other than a straight life annuity shall be made in accordance with §§401.F.1.b. or 401.F.1.c.

b. Benefit Forms Not Subject to Section 417(e)(3).

i. The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this Subparagraph F.1.b, if the form of the member's benefit is either:

(a). a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse); or

(b). an annuity that decreases during the life of the member merely because of:

(i). the death of the survivor annuitant (but only if the reduction is not below 50 percent of the benefit payable before the death of the survivor annuitant); or

(ii). the cessation or reduction of Social Security supplements or qualified disability payments [as defined in Section 401(a)(11)].

ii. Limitation years beginning before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(a). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form; and

(b). a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date.

iii. Limitation Years beginning on or after July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

(a). the annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and

(b). the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date.

c. Benefit Forms Subject to Section 417(e)(3). The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this paragraph if the form of the member's benefit is other than a benefit form described in §401.F.1.b. In this case, the actuarially equivalent straight life annuity shall be determined as follows:

i. Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

(a). the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of

computed using the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form;

(b). the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in R.S. 11:1171; and

(c). the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in R.S. 11:1171 and the applicable mortality table defined, divided by 1.05.

ii. Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greater annual amount:

(a). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form; and

(b). a 5.5 percent interest rate assumption and the applicable mortality table. If the annuity starting date of the member's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this §401.F.1.c. shall not cause the amount payable under the member's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this chapter, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greatest annual amount:

(i). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form;

(ii). the applicable interest rate defined in R.S. 11:1171 and the applicable mortality table; and

(iii). the applicable interest rate defined in R.S. 11:1171 (as in effect on the last day of the last plan year beginning before January 1, 2004, under provisions of the plan then adopted and in effect) and the applicable mortality table.

Applicable Mortality Table—the applicable mortality table within the meaning of Section 417(e)(3)(B) of the Internal Revenue Code.

415 Safe-Harbor Compensation—

a. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid

salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Section 1.62-2(c) of the Income Tax Regulations), and excluding the following:

i. Employer contributions [other than elective contributions described in Section 402(e)(3), Section 408(k)(6), Section 408(p)(2)(A)(i), or Section 457(b)] to a plan of deferred compensation (including a simplified employee pension described in Section 408(k) or a simple retirement account described in Section 408(p), and whether or not qualified) to the extent such contributions are not includible in the member's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified);

ii. Amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in Section 1.421-1(b) of the Income Tax Regulations), or when restricted stock (or property) held by the member either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

iii. Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;

iv. Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the member and are not salary reduction amounts that are described in Section 125);

v. Other items of remuneration that are similar to any of the items listed in Clauses i through iv above.

b. For any self-employed individual, compensation shall mean earned income.

c. Except as provided herein, for limitation years beginning after December 31, 1991, compensation for a limitation year is the compensation actually paid or made available during such limitation year.

d. For limitation years beginning on or after July 1, 2007, compensation for a limitation year shall also include compensation paid by the later of 2 1/2 months after an member's severance from employment with the employer maintaining the plan or the end of the limitation year that includes the date of the member's severance from employment with the employer maintaining the plan, if:

i. the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer;

ii. the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

iii. the payment is received by the member pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if

employment had continued, but only to the extent includible in gross income.

e. Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 1/2 months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment. Back pay, within the meaning of Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

f. For limitation years beginning after December 31, 1997, compensation paid or made available during such limitation year shall include amounts that would otherwise be included in compensation but for an election under Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

g. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4).

Defined Benefit Compensation Limitation—100 percent of a member's high three-year average compensation, payable in the form of a straight life annuity. In the case of a member who is rehired after a severance from employment, the defined benefit compensation limitation is the greater of 100 percent of the member's high three-year average compensation, as determined prior to the severance from employment or 100 percent of the member's high three-year average compensation, as determined after the severance from employment under §401.G.

Defined Benefit Dollar Limitation—effective for limitation years ending after December 31, 2001, the defined benefit dollar limitation is \$160,000, automatically adjusted under Section 415(d) of the Internal Revenue Code, effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

Employer—for purposes of this chapter, employer shall mean the employer that adopts this plan, and all members of a controlled group of corporations, as defined in Section 414(b) of the Internal Revenue Code, as modified by Section 415(h), all commonly controlled trades or businesses [as defined in Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Section 415(h)], or affiliated service groups [as defined in Section 414(m)] of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to Section 414(o) of the Internal Revenue Code.

Formerly Affiliated Plan of the Employer—a plan that, immediately prior to the cessation of affiliation, was actually maintained by the employer and, immediately after the cessation of affiliation is not actually maintained by the employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the employer, such as the sale of a member controlled group of corporations, as defined in Section 414(b) of the Internal

Revenue Code, as modified by Section 415(h), to an unrelated corporation, or that causes a plan to not actually be maintained by the employer, such as transfer of plan sponsorship outside a controlled group.

High Three-Year Average Compensation—the average compensation for the three consecutive years of service (or, if the member has less than three consecutive years of service, the member's longest consecutive period of service, including fractions of years, but not less than one year) with the employer that produces the highest average. A year of service with the employer is the 12 consecutive month period defined in R.S. 11:1131. In the case of a member who is rehired by the employer after a severance from employment, the member's high three-year average compensation shall be calculated by excluding all years for which the member performs no services for and receives no compensation from the employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A member's compensation for a year of service shall not include compensation in excess of the limitation under Section 401(a)(17) of the Internal Revenue Code that is in effect for the calendar year in which such year of service begins.

Limitation Year—a fiscal year, from July 1 to June 31. All qualified plans maintained by the employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

Maximum Permissible Benefit—the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided below).

a. Adjustment for Less than 10 Years of Participation or Service. If the member has less than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction:

i. the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the plan; and

ii. the denominator of which is 10. In the case of a Member who has less than 10 years of service with the employer, the defined benefit compensation limitation shall be multiplied by a fraction:

(a). the numerator of which is the number of years (or part thereof, but not less than one year) of Service with the employer; and

(b). the denominator of which is 10.

b. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement before Age 62 or after Age 65. Effective for benefits commencing in limitation years ending after December 31, 2001, the defined benefit dollar limitation shall be adjusted if the annuity starting date of the member's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the defined benefit dollar limitation shall be adjusted under Clause b.i of this Paragraph, as modified by Clause b.iii of this Paragraph. If the annuity starting date is after age 65, the defined benefit dollar limitation shall be adjusted under Clause b.ii of this Paragraph, as modified by Clause b.iii of this Paragraph.

i. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement before Age 62

(a). Limitation Years Beginning before July 1, 2007. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under §401.F.10.a. for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171; or

(ii). a 5 percent interest rate assumption and the applicable mortality table as defined in R.S. 11:1171.

(b). Limitation Years Beginning on or After July 1, 2007

(i). Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date as defined in R.S. 11:1171 (and expressing the member's age based on completed calendar months as of the annuity starting date).

(ii). Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the member's annuity starting date is the lesser of the limitation determined under Division b.i.(b).(i) of this Paragraph and the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this article.

ii. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement after Age 65

(a). Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the

member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171; or

(ii). a 5-percent interest rate assumption and the applicable mortality table as defined in R.S. 11:1171.

(b). Limitation Years Beginning Before July 1, 2007

(i) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined in R.S. 11:1171 (and expressing the member's age based on completed calendar months as of the annuity starting date).

(ii) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the member's annuity starting date is the lesser of the limitation determined under §401.F.10.b.ii.(b).(i). and the defined benefit dollar limitation (adjusted under §401.F.10.a. for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this article. For this purpose, the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

iii. Notwithstanding the other requirements of this Subparagraph F.10.b., no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the plan does not charge members for providing a qualified preretirement survivor annuity, as defined in Section 417(c) of the Internal Revenue Code, upon the member's death.

c. Minimum Benefit Permitted. Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a member under this plan shall be deemed not to exceed the maximum permissible benefit if:

i. the retirement benefits payable for a limitation year under any form of benefit with respect to such member under this plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the employer do not exceed \$10,000 multiplied by a fraction:

(a). the numerator of which is the member's number of years (or part thereof, but not less than one year) of service (not to exceed 10) with the employer; and

(b). the denominator of which is 10; and

ii. the employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the member participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Section 401(h), and accounts for postretirement medical benefits established under Section 419A(d)(1) are not considered a separate defined contribution plan).

Predecessor Employer—if the employer maintains a plan that provides a benefit which the member accrued while performing services for a former employer, the former employer is a predecessor employer with respect to the member in the plan. A former entity that antedates the employer is also a predecessor employer with respect to a member if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

Severance from Employment—an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan. An employee does not have a severance from employment if, in connection with a change of employment, the employee's new employer maintains the plan with respect to the employee.

Year of Participation—the member shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met:

a. the member is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period; and

b. the member is included as a member under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the member shall equal the amount of benefit accrual service credited to the member for such accrual computation period. A member who is permanently and totally disabled within the meaning of Section 415(c)(3)(C)(i) of the Internal Revenue Code for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a member to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any 12-month period.

Year of Service—for purposes of Section 401.G, the member shall be credited with a year of service (computed to fractional parts of a year) for each accrual computation period for which the member is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, taking into account only service with the employer or a predecessor employer.

G. Other Rules

1. **Benefits under Terminated Plans.** If a defined benefit plan maintained by the employer has terminated with sufficient assets for the payment of benefit liabilities of all plan members and a member in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the member's benefits under the terminated plan at each possible annuity starting date shall be taken into account in applying the limitations of this article. If there are not sufficient assets for the payment of all Members' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Member under the terminated plan.

2. **Benefits Transferred from the Plan.** If a Member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the employer and the transfer is not a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the Income Tax Regulations, the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan that is not maintained by the employer and the transfer is not a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the Income Tax Regulations, the transferred benefits are treated by the employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the employer that terminated immediately prior to the transfer with sufficient assets to pay all members' benefit liabilities under the plan. If a member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the Income Tax Regulations, the amount

transferred is treated as a benefit paid from the transferor plan.

3. **Formerly Affiliated Plans of the Employer.** A formerly affiliated plan of an employer shall be treated as a plan maintained by the employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay members' benefit liabilities under the plan and had purchased annuities to provide benefits.

4. **Plans of a Predecessor Employer.** If the employer maintains a defined benefit plan that provides benefits accrued by a member while performing services for a predecessor employer, the member's benefits under a plan maintained by the predecessor employer shall be treated as provided under a plan maintained by the employer. However, for this purpose, the plan of the predecessor employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor employer relationship with sufficient assets to pay members' benefit liabilities under the plan, and had purchased annuities to provide benefits; the employer and the predecessor employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the plan of the predecessor employer.

5. **Special Rules.** The limitations of this chapter shall be determined and applied taking into account the rules in Section 1.415(f)-1(d), (e) and (h) of the Income Tax Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1165.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees' Retirement System, LR 38:

§403. Required Minimum Distributions

A.1. Unless the member has elected otherwise on or before December 31, 1983, the entire benefit of a member shall be distributed over a period not longer than the longest of the following periods:

- a. the member's life;
- b. if the member is married, the life of the member's designated beneficiary;
- c. the member's life expectancy;
- d. the joint life and last survivor life expectancy of the member and his designated beneficiary.

2. If the member is married and his spouse survives him, the designated beneficiary for at least a qualified joint and survivor annuity and 50 percent of his deferred retirement option plan account shall be his spouse, unless such spouse has consented to the contrary in writing before a notary public. For purposes of this Paragraph, *spouse* shall mean that person who is married to the member under a legal regime of community of acquets and gains on his effective date of retirement or effective date of participation in the deferred retirement option plan, whichever is earlier.

3. If the member was a member on or before December 31, 1983, he shall be deemed to have made the election referred to herein. If a member dies after the commencement of his benefits, the remaining portion of his benefit shall be distributed at least as rapidly as before his

death. Payment of survivor benefits shall not be considered to violate this provision.

B.1. If the member dies before his benefit has commenced the remainder of such interest shall be distributed to the member's beneficiary within five years after the date of such member's death.

2. Paragraph 1 of this Subsection shall not apply to any portion of a member's benefit which is payable to or for the benefit of a designated beneficiary or beneficiaries, over the life of or over the life expectancy of such beneficiary, so long as such distributions begin not later than one year after the date of the member's death, or, in the case of the member's surviving spouse, the date the member would have attained the age of 70 years and six months. If the designated beneficiary is a child of the member, for purposes of satisfying the requirement of Paragraph 1 of this Subsection, any amount paid to such child shall be treated as if paid to the member's surviving spouse if such amount would become payable to such surviving spouse, if alive, upon the child's reaching age eighteen or, if later, upon the child's completing a designated event. For purposes of the preceding sentence, a designated event shall be the later of the date the child is no longer disabled, or the date the child ceases to be a full-time student or attains age 23, if earlier.

3. Paragraph 1 of this Subsection shall not apply if the distribution of the member's interest has commenced and is for a term certain over a period permitted in Subsection A of this Section.

4. Paragraph 1 of this Subsection shall not apply if the member has elected otherwise on or before December 31, 1983, or such later date to which such election period shall be subject under Internal Revenue Code Section 401(a).

C. As to any benefit payable by the retirement system which is not optional as of December 31, 1983, the member shall be considered to have made the election referred to in Subsections A and B of this Section, if he was a member on or before such time.

D. If by operation of law or by action of the board of trustees, a survivor benefit is payable to a specified person or persons, the member shall be considered to have designated such person as an alternate beneficiary hereunder. If there is more than one such person, then the youngest disabled child shall be considered to have been so designated, or, if none, then the youngest person entitled to receive a survivor benefit shall be considered to have been so designated. The designation of a designated beneficiary hereunder shall not prevent payment to multiple beneficiaries but shall only establish the permitted period of payments.

E. Payment in accordance with the survivor benefit provisions of R.S. 11:1151 shall be deemed not to violate Subsections A and B of this Section.

F. This Section shall be effective for members of the system who complete any service under the system on or after July 1, 1992, with employers contributing to the system.

G. Distributions from the system shall be made in accordance with the requirements set forth in Internal Revenue Code Section 401(a)(9), including the minimum distribution incidental benefit rules applicable thereunder.

H.1. A member's benefits shall commence to be paid on or before the required beginning date.

2. The required beginning date shall be April 1 of the calendar year following the later of the calendar year in which the member attains 70 1/2 years of age, or the calendar year in which the employee retires. Effective for plan years beginning on or after January 1, 1998, the required beginning date shall be April 1 of the year following the later of the year the member attained 70 1/2 or the year he terminated employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees Retirement System, LR 38:

§405. Direct Rollovers

A. Notwithstanding any other provision of law to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an "eligible rollover distribution", as specified by the distributee, paid directly to an "eligible retirement plan", as those terms are defined below.

B. The following definitions shall apply.

Eligible Rollover Distribution—any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

a. any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life or life expectancy of the member, or the joint lives or joint life expectancies of the member and the member's designated beneficiary, or for a specified period of ten years or more;

b. any distribution to the extent that such distribution is required under Section 401(a)(9) of the United States Internal Revenue Code; and

c. any distribution which is made upon hardship of the employee.

Eligible Retirement Plan—any of the following:

a. an individual retirement account described in Section 408(a) of the Internal Revenue Code;

b. an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;

c. an annuity plan described in Section 403(a) of the Internal Revenue Code;

d. a qualified trust as described in Section 401(a) of the Internal Revenue Code, provided that such trust accepts the member's eligible rollover distribution;

e. an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by an eligible governmental employer, provided the plan contains provisions to account separately for amounts transferred into such plan; and

f. an annuity contract described in Section 403(b) of the Internal Revenue Code.

Distributee—shall include:

a. a member or former member;

b. the member's or former member's surviving spouse, or the member's or former member's former spouse with whom a benefit or a return of employee contributions is to be divided pursuant to R.S. 11:291(B), with reference to an interest of the member or former spouse;

c. the member's or former member's non-spouse beneficiary, provided the specified distribution is to an

eligible retirement plan as defined in Subparagraphs a and b of the definition of *eligible retirement plan* in this Section.

Direct Rollover—a payment by the system to the eligible retirement plan specified by the distributee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees Retirement System, LR 38:

§407. Annual Compensation Limitation

A. Unless otherwise provided in this Chapter, the accrued benefit of each “Section 401(a)(17) employee” as that term is defined below shall be the greater of the following:

1. The employee's accrued benefit determined with respect to the benefit formula applicable for the plan year beginning on or after January 1, 1996, as applied to the employee's total years of service taken into account for purposes of benefit accruals.

2. The sum of:

a. the employee's accrued benefit as of the last day of the last plan year beginning before January 1, 1996, frozen in accordance with the provisions of Section 1.401(a)(4)-1 through 1.401(a)(4)-13 of the Code of Federal Regulations;

b. the employee's accrued benefit determined under the benefit formula applicable for the plan year beginning on or after January 1, 1996, as applied to the employee's years of service credited to the employee for plan years beginning on or after January 1, 1996, for purposes of benefit accruals.

B. A *Section 401(a)(17) employee* shall mean any employee whose current accrued benefit, as of a date on or after the first day of the first plan year beginning on or after January 1, 1996, is based on compensation for a year beginning prior to the first day of the first plan year beginning on or after January 1, 1996, that exceeded \$150,000.

C. If an employee is not a “Section 401(a)(17) employee”, his accrued benefit in this system shall not be based upon compensation in excess of the annual limit of Section 401(a)(17) of the United States Internal Revenue Code as amended and revised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees Retirement System, LR 38:

Family Impact Statement

The proposed adoption of LAC 58:VII.401, regarding Internal Revenue Code provisions applicable to the Louisiana School Employees’ Retirement System, should not have any known or foreseeable impact on any family as

defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; or
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Any interested person may submit written comments regarding this proposed Rule to Carolyn Forbes, Assistant Director, Louisiana School Employees’ Retirement System by mail to 8660 United Plaza Blvd., Baton Rouge, LA 70809. All comments must be received no later than 4:30 p.m., June 11, 2012.

Charles P. Bujol
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Internal Revenue Code Provisions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no net estimated implementation costs or savings to state or local governmental units. R.S. 11:1165.1 requires that provisions relating to the tax-qualification status of the Louisiana School Employees’ Retirement System be contained in rules and regulations.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no estimated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no estimated effect on competition or employment.

Charles P. Bujoi
Executive Director
1205#026

Evan Brasseaux
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Office of the Governor Oil Spill Coordinator's Office

Deepwater Horizon Oil Spill; Final Phase I Early Restoration Plan and Environmental Assessment

Action: Notice of availability of final report.

Summary: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), the Louisiana Oil Spill Prevention and Response Act (OSPRA), and the Framework Agreement for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill (Framework Agreement), notice is hereby given that the Federal and State natural resource trustee agencies (Trustees) have approved the Phase I Early Restoration Plan and Environmental Assessment (Phase I ERP/EA) describing the first eight restoration projects selected by the Trustees to commence the process of restoring natural resources and services injured or lost as a result of the Deepwater Horizon oil spill, which occurred on or about April 20, 2010, in the Gulf of Mexico. The purpose of this notice is to inform the public of the availability of the Phase I ERP/EA.

Addresses: Obtaining Documents: You may download the Phase I ERP/EA and the Framework Agreement at <http://losco-dwh.com/>. Alternatively, you may request a CD of the document (see For Further Information Contact). You may also review hard copies of the Phase I ERP/EA at any of the public repositories listed at <http://losco-dwh.com/>.

For Further Information Contact: Karolien Debusschere at Karolien.Debusschere@la.gov

Supplementary Information:

Introduction

On or about April 20, 2010, the mobile offshore drilling unit Deepwater Horizon, which was being used to drill a well for BP Exploration and Production, Inc. (BP) in the Macondo prospect (Mississippi Canyon 252 – MC252), experienced a significant explosion, fire and subsequent sinking in the Gulf of Mexico, resulting in discharges of oil and other substances from the rig and from the wellhead on the seabed. An estimated 4.9 million barrels (210 million gallons) of oil were released from the well into the Gulf of Mexico over a period of approximately three months. In addition, approximately 771,000 gallons of dispersants were applied to the waters of the spill area in an attempt to minimize impacts from spilled oil. Affected resources include ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas.

Federal and State trustees (listed below) are conducting the natural resource damage assessment for the Deepwater Horizon oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. § 2701 et seq.).

The Trustees are:

U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S Fish and Wildlife Service, and Bureau of Land Management;

National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S Department of Commerce;

State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries and Department of Natural Resources;

State of Mississippi Department of Environmental Quality;

State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;

State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and

Texas Parks and Wildlife Department, Texas General Land Office and Texas Commission on Environmental Quality.

The U.S. Department of Defense (DOD) is a Trustee, but does not have affected lands in this Phase I ERP/EA.

Background

On April 20, 2011, BP agreed to provide up to \$1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the Deepwater Horizon oil spill. The Framework Agreement provides a mechanism through which the Trustees and BP can work together “to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable” prior to the completion of the natural resource damage assessment process or full resolution of the Trustees’ natural resource damages claim.

As the first step in this accelerated process, the Trustees proposed a suite of eight early restoration projects in a Phase I Draft Early Restoration Plan and Environmental Assessment (DERP/EA) released on December 14, 2011. The public was afforded sixty (60) days to review and comment on the DERP/EA. 76 Fed. Reg. 78016 (December 15, 2011). During that review period, the Trustees also held 12 public meetings in January and February 2012 in the 5 Gulf States and Washington, DC to facilitate public comment on that plan.

The Trustees considered the public comments on the DERP/EA prior to finalizing selection of the Phase I Early Restoration projects. The public comments received and the Trustees’ responses are addressed in the Phase I ERP/EA at Chapter 5.

Overview of the Phase I ERP/EA

Early Restoration Plan Alternatives, Including the Selected Alternative

The ERP/EA describes two early restoration alternatives: No Action – Natural Recovery (required for consideration by OPA) and Selected Alternative – Phase I Early Restoration Projects. Under the No Action Alternative, the trustees would not implement early restoration projects as described

in this ERP/EA. Rather, the trustees would rely, for the time being, solely on natural recovery processes to restore natural resources to their pre-spill conditions and would undertake no early actions to accelerate recovery or to help address interim resource losses.

The Selected Alternative includes eight projects that meet the selection criteria as described in the Phase I ERP/EA.

Selected Early Restoration Alternative

The Selected Alternative includes the following suite of early restoration projects: (1) Lake Hermitage Marsh Creation- NRDA Early Restoration Project; (2) Louisiana Oyster Cultch Project; (3) Mississippi Oyster Cultch Restoration; (4) Mississippi Artificial Reef Habitat; (5) Marsh Island (Portersville Bay) Marsh Creation; (6) Alabama Dune Restoration Cooperative Project; (7) Florida Boat Ramp Enhancement and Construction; (8) Florida (Pensacola Beach) Dune Restoration. Each of these projects is expected to benefit a natural resource or service injured by the Deepwater Horizon oil spill.

This Phase I ERP/EA represents the initial set of projects selected as part of the early restoration process. Planning for additional early restoration actions is continuing. Neither the Phase I ERP/EA nor any subsequent plan for early restoration is intended to or will fully address all injuries caused by the spill or provide the extent of restoration needed to satisfy claims against responsible parties. Further comprehensive restoration will still be required to fully compensate the public for natural resource losses from the oil spill.

Administrative Record

The documents comprising the Administrative Record can be viewed electronically at the following location: <http://losco-dwh.com/AdminRecord.aspx>.

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. § 2701 et seq.), the implementing Natural Resource Damage Assessment regulations found at 15 CFR Part 990, the Louisiana Oil Spill Prevention and Response Act (La. R.S. §§30:2451-2496 (2010)), the implementing Natural Resource Damage Assessment regulations found at LAC 43:XXIX.101 et seq. and the Framework Agreement.

Roland Guidry
Coordinator

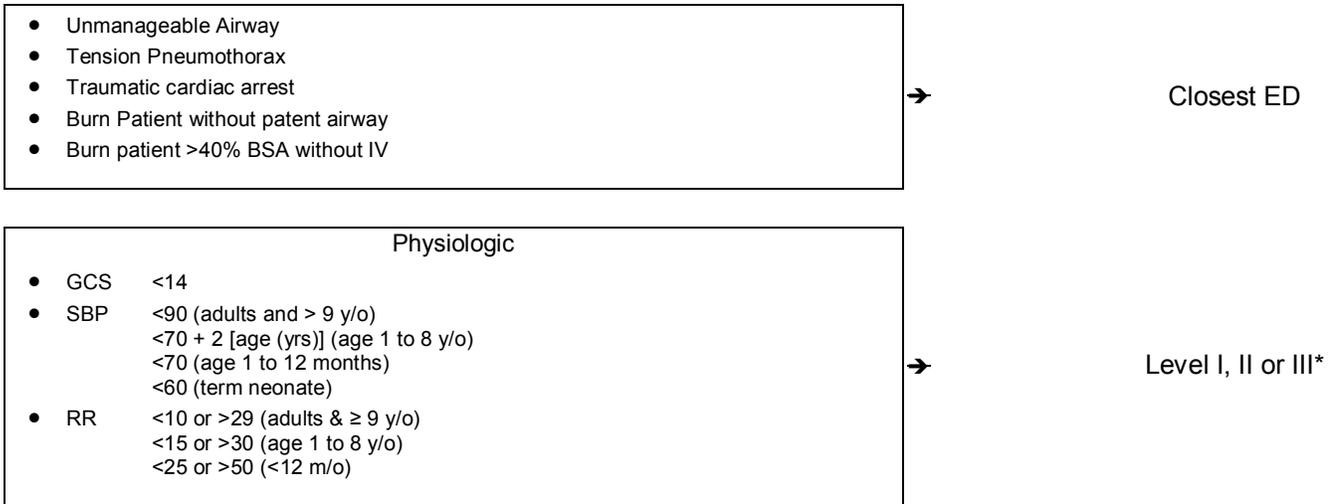
1205#075

POTPOURRI

**Department of Health and Hospitals
Emergency Response Network Board**

LERN Destination Protocol: TRAUMA

On April 26, 2012, the Louisiana Emergency Response Network Board (La. R.S. 40:2842(1) and (3)] adopted and promulgated "LERN Destination Protocol: Trauma" replacing the "LERN Destination Protocol: Trauma" adopted and promulgated April 21, 2011, as follows:



Anatomic	
<ul style="list-style-type: none"> • Open or depressed skull fractures • Open head injury with or without CSF leak • Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit) • All penetrating injuries to head, neck, torso, & extremities proximal to elbow & knee • Flail Chest • 2 or more proximal long-bone fractures • Crush, degloved or mangled extremity • Amputation proximal to wrist & ankle • Pelvic Fractures • Hip Fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls • Major joint dislocations (hip, knee, ankle, elbow) • Open Fractures • Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture) 	→

Level I, II or III*

Mechanism	
<ul style="list-style-type: none"> • Falls >20 ft. adults >10 ft. (child) or 2 to 3 times height • High-risk auto crash <ul style="list-style-type: none"> • Intrusion 12 in. occupant site >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment • Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact • Motorcycle crash >20 MPH 	→

Level I, II, or III*

Other	
<ul style="list-style-type: none"> • Pregnancy >20 weeks • Burns (follow ABA guidelines) • Age ≥55 y/o or <8 y/o • Anticoagulation & bleeding disorders –patients w/ head injuries are at high risk for rapid deterioration 	→

Level II or III*

MULTI / MASS CASUALTY INCIDENT (MCI)	→
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Level I, II or, III *

*Refers to ACS Verified Level Trauma Center – Where Trauma Center not available, patient will be routed to facility with appropriate resource which may not need be the highest level facility.

Norman E. McSwain, Jr.
Chair

1205#018

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Hearing—Docket No. ENV 2012-04

Notice is hereby given that the commissioner of conservation will conduct a hearing at 6 p.m., Thursday, July 12, 2012, at the Rayne Civic Center, The Mural Room located at 110 Frog Festival Drive, Rayne, LA.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application

of LA Tank-Branch LLC, 5809 Church Point Highway, Rayne, LA 70578. The applicant requests approval from the Office of Conservation to construct and operate a commercial deep well injection waste disposal facility for disposal of exploration and production waste (E and P Waste) fluids located in Section 86, Township 8 South, Range 2 East in Acadia Parish.

The application is available for inspection by contacting Mr. Stephen Olivier, Office of Conservation, Environmental Division, Eighth Floor of the LaSalle Office Building, 617 North Third Street, Baton Rouge, LA. Copies of the application will be available for review at the Acadia Parish Police Jury in Crowley, LA and the Acadia Parish Rayne Branch Library in Rayne, LA no later than 30 days prior to the hearing date. Verbal information may be received by calling Mr. Olivier at (225) 342-7394.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said

public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Thursday, July 19, 2012, at the Baton Rouge office. Comments should be directed to:

Office of Conservation
 Environmental Division
 P.O. Box 94275
 Baton Rouge, LA 70804
 Re: Docket No. ENV 2012-04
 Commercial Facility Well Application
 Acadia Parish

James H. Welsh
 Commissioner

1205#045

POTPOURRI

**Department of Natural Resources
 Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared orphaned oilfield sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Dearman-McMillan	Lisbon, West	S	H W Patton et al	001	20200
Leslie Bowling	Vacherie	L	St Joseph Plntg and Mfg Co	001	57045(30)
Grand Cane Oil and Gas Company	Wildcat-NO LA Shreveport Dist	S	Union Central Life Ins Co	001	28287
Lagrange Petroleum Co	Port Barre	L	S D Cochran	001	49263(30)
Perry R. Bass	Little Lake	L	A S Burglass et al SL 2383	001	52331
Plymouth Oil Company	Bayou Pigeon	L	Lynch McHugh Heirs	002	25461
B and M Oilfield Service, Inc.	Big Bayou	M	Louisiana Delta SWD	A-1	76131
unknown	Monroe	M	Fisher	001	990472
S. W. Richardson	Cheneyville	L	Weil Co Inc	012	24059(30)
Red River Oil and Gas Inc.	Bayou Mallet, South	L	A Leonards Heirs SWD	001	138801
Red River Oil and Gas Inc.	Bayou Mallet, South	L	A Leonards Heirs B	005	150627

Operator	Field	District	Well Name	Well Number	Serial Number
Red River Oil and Gas Inc.	Bayou Mallet, South	L	A Leonards Heirs B SWD	006	163154
Red River Oil and Gas Inc.	Bayou Mallet, South	L	A Leonards Heirs B	003	185560
Red River Oil and Gas Inc.	Bayou Mallet, South	L	A Leonards Heirs B	008	189317
Red River Oil and Gas Inc.	Bayou Mallet, South	L	A Leonards Heirs B	010	207817
Red River Oil and Gas Inc.	Bayou Mallet, South	L	A Leonards Heirs B	011	208303
Red River Oil and Gas Inc.	Bayou Mallet, South	L	A Leonards Heirs B	015	210760
Red River Oil and Gas Inc.	Bayou Mallet, South	L	Hmskrs A RA SUA; Leonards Hrs B	016-ALT	211139
Red River Oil and Gas Inc.	Bayou Mallet, South	L	A Leonards Heirs R	001	220253
Red River Oil and Gas Inc.	Caddo Pine Island	S	Brown-Holt	002	110720
Red River Oil and Gas Inc.	Caddo Pine Island	S	Brown-Holt	001	110721
Red River Oil and Gas Inc.	Caddo Pine Island	S	Brown-Holt	003	156521
Red River Oil and Gas Inc.	Caddo Pine Island	S	Brown-Holt	004	156522
Red River Oil and Gas Inc.	Carterville	S	Pet RA SUH;Coyle Est	001	191034
Red River Oil and Gas Inc.	Carterville, North	S	Bolinger A	001	85581
Red River Oil and Gas Inc.	Carterville, North	S	Bolinger	001	95841
Red River Oil and Gas Inc.	Carterville, North	S	Bolinger	002	97603
Red River Oil and Gas Inc.	Carterville, North	S	S B and T etal	001	97904
Red River Oil and Gas Inc.	Carterville, North	S	Bolinger A	004	98918
Red River Oil and Gas Inc.	Carterville, North	S	Robertson	001	99122
Red River Oil and Gas Inc.	Carterville, North	S	Bolinger SWD	003	99578

Operator	Field	District	Well Name	Well Number	Serial Number
Red River Oil and Gas Inc.	Carterville, North	S	Bolinger A	003	99846
Red River Oil and Gas Inc.	Carterville, North	S	Pet RA SUL; Willamette O	002	187652
Red River Oil and Gas Inc.	Carterville, North	S	Willamette P	002	188598
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	001	166100
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	002	166101
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	003	166102
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	004	166103
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	006	166449
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	007	166450
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	009	166452
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	022	168020
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Brown	001	171448
Red River Oil and Gas Inc.	Greenwood-Waskom	S	PXY SUA; Brown	001-D	172458
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	005	215591
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	010	236914
Red River Oil and Gas Inc.	Greenwood-Waskom	S	Nettie Soniat	012	236916
Red River Oil and Gas Inc.	Rodessa	S	Skelly Fee	001	44003
Red River Oil and Gas Inc.	Rodessa	S	Brooks Fee SWD	001	53669
Red River Oil and Gas Inc.	Rodessa	S	VUA; Bain-Armstrong	001	124854
Red River Oil and Gas Inc.	Rodessa	S	VUC; Geo Pill	001	125119

Operator	Field	District	Well Name	Well Number	Serial Number
Red River Oil and Gas Inc.	Rodessa	S	Rodessa Oil and Land Co	001	185603
Red River Oil and Gas Inc.	Simsboro, West	S	Rachel Gafford	001	87982

James H. Welsh
Commissioner

1205#017

POTPOURRI

**Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et. seq., notice is given that 4 claims in the amount of \$20,000.00 were received for payment during the period April 1, 2012 - April 30, 2012.

There were 4 claims paid and 0 claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2913.178	8959.467	Jefferson
2914.671	9039.656	Terrebonne
2917.687	8954.202	Plaquemines
2932.241	9003.833	Jefferson

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-9388.

Scott A. Angelle
Secretary

1205#022

POTPOURRI

**Department of Revenue
Policy Services Division**

Natural Gas Severance Tax Rate
Effective July 1, 2012

The natural gas severance tax rate has been set at 14.8 cents per thousand cubic feet (MCF) measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of 60 degrees Fahrenheit effective July 1, 2012, through June 30, 2013.

This tax rate is set each year by multiplying the natural gas severance tax base rate of 7 cents per MCF by the "gas base rate adjustment" determined by the Secretary of the Department of Natural Resources in accordance with R.S. 47:633(9)(d)(i). The "gas base rate adjustment" is a fraction,

of which the numerator is the average of the New York Mercantile Exchange (NYMEX) Henry Hub settled price on the last trading day for the month, as reported in the Wall Street Journal for the previous 12-month period ending on March 31, and the denominator is the average of the monthly average spot market prices of gas fuels delivered into the pipelines in Louisiana as reported by the Natural Gas Clearing House for the 12-month period ending March 31, 1990 (1.7446 \$/MMBTU).

Based on this computation, the Secretary of the Department of Natural Resources has determined the natural

gas severance “gas base rate adjustment” for April 1, 2011, through March 31, 2012, to be 212.00 percent. Applying this gas base rate adjustment to the base tax rate of 7 cents per MCF produces a tax rate of 14.8 cents per MCF effective July 1, 2012, through June 30, 2013. The reduced natural gas severance tax rates provided for in R.S. 47:633(9)(b) and (c) remain the same.

Questions concerning the natural gas severance tax rate should be directed to the Department of Revenue at 225-219-7462.

Cynthia Bridges
Secretary

1205#035

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